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PART II. CONSTRUCTION AND VALUATION

CHAPTER 8. INTRODUCTION

CHAPTER 8. INTRODUCTION

8.01 REASONABLE VALUE - REGULATORY REQUIREMENT AND DEFINITION

The regulatory requirement for the determination of reasonable value is in 38 CFR 36.4336(a)(2). The definition of reasonable value in 36 CFR 36.4301 is "that figure which represents the amount a reputable and qualified appraiser, unaffected by personal interest, bias, or prejudice, would recommend to a prospective purchaser as a proper price or cost in the light of prevailing conditions."

8.02 WHEN IS IT NECESSARY TO OBTAIN AN APPRAISAL FROM VA

When a veteran is financing the purchase of a property or refinancing an existing loan using VA eligibility for a guaranteed, insured, or direct loan, an appraisal must be obtained from VA. An appraisal must also be obtained in the following instances:

a. Loans for alterations, improvements, or repairs to real property acquired or to be acquired under the VA Loan Guaranty Program;

b. When an owner requests VA approval of a release of a portion of the real estate which is security for a VA guaranteed, insured, or direct loan; and

c. When a veteran is seeking a VA guaranteed, insured or direct loan for a specially adapted house.

8.03 WHO COMPLETES THE APPRAISAL

Each VA regional office maintains a roster of VA-approved appraisers. A sufficient number of appraisers are maintained on the roster to accommodate all appraisal requests timely.

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CHAPTER 9. REQUESTING A DETERMINATION OF REASONABLE VALUE

CHAPTER 9. REQUESTING A DETERMINATION OF REASONABLE VALUE

9.01 REQUIREMENTS

All requests for determination of reasonable value are submitted to the VA regional office having jurisdiction over the area where the property is located.

a. Requests for VA Determination of Reasonable Value. VA Form 26-1805, VA Request for Determination of Reasonable Value, must be submitted for appraisals of real property, or of alterations, improvements, or repairs to real property when their cost exceeds $3,500. Exceptions are requests involving an appraisal for partial release, or when the property is listed on an outstanding MCRV (VA Form 26-1843a, Master Certificate of Reasonable Value). When properties are listed on an MCRV, the loan application or loan report will be treated as the request for an individual CRV (certificate of reasonable value) for the property involved, and an individual CRV will be prepared based on data supplied in the loan submission, unless a photocopy of the related MCRV accompanies the loan papers. Telephone requests for appraisal of existing or proposed construction cases are acceptable. Liquidation appraisal requests made by telephone will also be accepted, and these assignments will use the existing VA loan number. VA regional offices have the authority to prescribe the processing of telephone requests for appraisal assignments. While appraisal assignment procedures may vary, the following is a general description of the process for requesting a determination of reasonable value from VA.

(1) VA Form 26-1805 is completed by typing only.

(2) The requester telephones the VA regional office, provides the necessary data, and is given the case number and name of the designated appraiser.

(3) The case number is entered in the appropriate box on VA Form 26-1805 (copy 1). Copy 2 is retained for record purposes and copy 6 is mailed to the fee appraiser as assignment notification.

(4) The remainder of the VA Form 26-1805 package (copies 1, 3, 4, and 5) is submitted to VA.

(5) In lieu of the above procedures, VA regional offices may use the following alternate procedure for processing telephone requests for appraisal:

(a) The VA Form 26-1805 package is not mailed to VA, but the requester calls the VA regional office for assignment of a case number and the fee appraiser. Then, VA Form 26-1805 is completed (including items 1, 42 and 43). Copy 2 is retained and the remainder of the package (copies 1, 3, 4, 5 and 6) and any exhibits are sent to the assigned fee appraiser. Upon completion of the assignment, the fee appraiser forwards copies 1, 3, 4 and 5, two copies of the completed appraisal report, and exhibits to VA. Carbon sheets are left intact.

(b) This alternate procedure can also be used to simplify appraisal processing in proposed construction cases where construction exhibits have been certified as meeting all local code requirements and are in substantial conformity with VA MPR's (minimum property requirements) [, including the energy conservation standards of the 1992 Council of American Building Officials (CABO) Model Energy Code (MEC)]. In addition to the above procedure, the requester must ensure that both the required certification and VA case number are visible on the outside of each set of construction exhibits. A minimum of three sets of construction exhibits are required if compliance inspections will be made by VA. [Requesters are encouraged to use reduced-size plans for this purpose. (See par. 9.06b.)] Only one set is required if inspections will be made by HUD (Department of Housing and Urban Development). In all cases, the requester will include one set of the construction exhibits with the package sent to the fee appraiser. When compliance inspections are to be made by VA, one set of exhibits will be forwarded to the fee compliance inspector assigned at the time of the telephone appraisal request. Another set of exhibits will be forwarded to the builder, and are to be kept at the job site.

b. Acceptance of HUD Conditional Commitments. As an optional procedure, requesters may submit (1) a valid HUD Form 92800.5b, HUD Conditional Commitment/Direct Endorsement Statement of Appraised Value; or (2) HUD Forms 91322, Master Conditional Commitment/Master Appraisal Report; 91322.1, Attachment Number 1 to: Master Conditional Commitment/Master Appraisal Report; and 91322.2, Amendment to: Master Conditional Commitment/Master Appraisal Report, with VA Form 26-1805. This procedure will eliminate the need for a VA appraisal, and VA Form 26-1843 may be issued based on the HUD conditional commitment valuation. A HUD case number on HUD Form 92800.5b has 10 digits, including leading zeros (example: 0410632943). The first three digits identify the HUD office and the last seven digits identify the case. Only cases in which the section of the National Housing Act is identified as "203(b)," "203(i)," 221(d)(2)" or "234(c)" are acceptable for processing. Any HUD case with the National Housing Act section identified as other than "203(b)," "203(i)," 221(d)(2)" or "234(c)" will be returned to the requester. If the HUD conditional commitment involves the appraisal of a leasehold

estate which does not involve Indian tribal land, the provisions of subparagraph d below shall apply. Cases which involve the appraisal of a leasehold estate on Indian tribal land are not acceptable for conversion to a VA certificate of reasonable value.

c. VA Form 26-8823, Acknowledgment of Receipt of VA Form 26-1805, may be used to notify lenders of case numbers when VA Forms 26-1805 are mailed to the regional office.

d. Requests for appraisals involving the creation of leaseholds, ground rental arrangements, or lesser estate than fee simple created after April 11, 1952, will not be processed by VA regional offices without prior approval of VA Central Office.

e. All requests for appraisal of existing and proposed construction are acceptable whether or not there is a veteran under contract to purchase the property to be appraised. However, VA regional office management, at its discretion, may decide that because of heavy workloads or limited available resources, or a combination of circumstances, requests for appraisal of existing construction will be acceptable only when a veteran is under contract. When regional offices decide to limit appraisal requests, they are guided by the following:

(1) With the exception of liquidation appraisal requests, all requests involving individual existing construction must be identified with a veteran who is using VA financing to refinance an existing loan or who has fully executed a purchase offer, contract, or purchase agreement to purchase the property to which the request relates. Individual existing property appraisal requests without an identified veteran will not be accepted by VA and no related VA Form 26-1843[, Certificate of Reasonable Value,] will be issued.

(2) The requester must provide a copy of the fully executed purchase offer, contract, or purchase agreement with the appraisal request package, or must clearly indicate in item 9 or 35, as appropriate, of VA Form 26-1805 that the veteran is altering, rehabilitating, or refinancing an existing loan on the property. This information must clearly indicate that the veteran is pursuing VA guaranteed financing.

(3) VA regional offices will condition all individual existing CRV's with the following statement: "This certificate is valid for the specified veteran only and for VA loan guaranty purposes only." This statement will appear in "Other Requirements" on VA Form 26-1843. General Condition no. 1 of this form will be deleted in each case. VA regional offices should remove the statement when requested in those instances in which a bona fide transaction cannot be consummated for any valid reason.

9.02 ORIGINATION OF VA FORM 26-1805

Requests for determination of reasonable value may be initiated by a veteran, lender, builder, owner, or sponsor using VA Form 26-1805. When a direct loan is involved, VA is considered a lender. Appraisals of a group of five or more similar houses, proposed or existing, generally will be made by a committee of designated appraisers. When VA Form 26-1805 is accompanied by a HUD conditional commitment, the related home loan application may be submitted simultaneously.

9.03 ELIGIBILITY OF PROPERTY

a. Proposed Construction. Proposed construction properties are eligible for appraisal provided the construction is subject to VA compliance inspections or to HUD supervision pursuant to HUD approval for mortgage insurance on the basis of proposed construction (i.e., first, second, third and necessary intermediate inspections made by HUD), or will be enrolled in an [insured 10-year] protection plan. Single family units under the supervision of HUD pursuant to sections 203(b), 203(i), 221(d)(2) and 234(c) of the National Housing Act are eligible for appraisal by VA provided the construction meets or exceeds VA MPR's.

b. While Under Construction. Properties on which construction has started prior to requesting VA appraisal are eligible:

(1) Provided the construction is being HUD or VA inspected, or the properties are enrolled in [an insured 10-year] protection plan. In HUD inspected cases, the appropriate certification must be completed on VA Form 26-1805.

(2) If the related loan is for the purpose of completing construction of a dwelling by a veteran for his or her own occupancy, and

(a) The veteran agrees to pay for a special compliance inspection to assure that completed work meets VA MPR's for existing construction.

(b) Plans and specifications are submitted that show the extent of the work necessary to complete the property.

(c) The veteran agrees to pay for any compliance inspections necessary to assure that the completed property meets or exceeds VA MPR's for existing construction.

c. As Existing Construction - Not Previously Occupied. Properties are eligible for appraisal as existing, not previously occupied:

(1) Regardless of the date construction began or was completed, provided the construction was HUD supervised, and the final HUD Form 92051, Compliance Inspection Report, accompanies the request.

NOTE: Photocopies or certified duplicates of HUD Form 92051 are acceptable. VA will accept as a substitute a letter from the HUD office of jurisdiction, stating that the property was completed in accordance with HUD-approved plans and specifications and change orders, if any.

(2) If the construction was completed in all respects 1 year or more prior to the date of the request for appraisal, and the properties are not otherwise ineligible, they may be accepted as existing construction regardless of whether or not inspected during construction by VA or HUD.

(3) Other existing, not previously occupied properties which have been completed less than a year, with no VA or HUD inspections completed during construction which may be eligible for appraisal by VA are:

(a) A residential property which is the security for a guaranteed or insured loan, or one made or held by VA even if located in a proscribed area where proposed construction would not be approved by VA;

(b) A residential property with construction fully complete except for customer preference items (e.g., interior finishes, appliances, equipment) and those improvements for which escrows are permissible by VA; and

1. The property complies with VA minimum property requirements for existing construction; and

2. It will be covered by an insured 10-year protection plan acceptable to HUD; and

3. The veteran-purchaser acknowledges in writing that he or she is aware that the property was not inspected during construction by either VA or HUD, and as such will not qualify for Government assistance in the correction of structural defects, and that VA will not intercede on the veteran's behalf in the processing of construction complaints[; and

4. The construction of the dwelling complies with the energy conservation standards of the 1992 Council of American Building Officials (CABO) Model Energy Code (MEC). (See par. 12.06g.)]

c. "Special Exception." Special exception processing may be permissible provided:

1. The request for appraisal is made on behalf of a prospective veteran-purchaser who acknowledges in writing his or her awareness that the property was not inspected during construction by either VA or HUD and as such will not qualify for Government assistance in the correction of structural defects, and that VA will not intercede on the veteran's behalf in the processing of construction complaints; and

2. At the time of appraisal, the construction is fully complete or completed up to the installation of customer preference items (e.g., appliances, finish fixtures, carpeting) and those exterior improvements for which escrows are permitted by the VA regional office; and

3. The property is the product of a builder who has never been involved with VA financing, or who only occasionally is involved with VA financing, or the property is located in an area where the services of a fee compliance inspection are not readily available; and

4. The lender provides VA with a copy of VA Form Letter 26-312, completed by the builder; and

5. The lender provides VA with a copy of documentation issued by the local building authority to verify that construction was acceptably completed, such as a final inspection or occupancy permit. In those areas that do not have building authorities that perform building inspections, the builder must provide a written statement that the dwelling was not inspected during construction by any State, county, or local jurisdiction; and

6. The builder certifies in writing that, "The dwelling was constructed in accordance with standard building practices and is in conformity with all applicable building codes [including the energy conservation standards of the 1992 Council of American Building Officials (CABO) Model Energy Code (MEC)]," and that he/she is aware that this property is being accepted by VA on an exception basis only upon the request of the veteran-purchaser, and that normal VA processing requires that the plans and specifications and VA compliance inspections be submitted during construction.

d. As Existing Construction - Previously Owner Occupied. Regardless of age, provided the property meets VA MPR's for existing construction.

9.04 EXISTING CONSTRUCTION - REQUIRED EXHIBITS

a. Alterations, Improvements, or Repairs to Existing Real Estate. Plans, specifications and other pertinent data required by the regional office must accompany VA Form 26-1805.

b. Urban Renewal and Code Enforcement Areas. The requester should supply all rehabilitation or applicable code requirements with appraisal requests for a guaranteed or direct loan when the properties are located in an urban renewal area or code revisions or enforcement are involved. These requirements will be considered by the VA fee appraiser and will be made a condition of the CRV, including the type of inspection required to assure completion prior to the issuance of evidence of guaranty. When code requirements are not submitted in advance of appraisal, the CRV will be conditioned upon evidence of code conformity.

9.05 PROPOSED CONSTRUCTION - REQUIREMENTS

No requests for appraisal involving proposed construction will be processed unless the construction is to be VA compliance-inspected or under HUD supervision applicable to proposed construction. Where the services of a qualified compliance inspector are not available and it is not practical to use salaried personnel, the regional office may not make the appraisal or assume responsibility for compliance inspections. Such properties may be appraised as existing construction after the buildings and improvements are completed.

9.06 PROPOSED CONSTRUCTION - REQUIRED EXHIBITS

a. Each request involving proposed construction must be accompanied by a sufficient number of copies of required exhibits to permit distribution of one set to the compliance inspector, the builder or contractor, and to the case file.

[b. Reduced-Size Plans. Since VA regional offices are required to keep plans and specifications on file, many offices are experiencing file storage and handling problems associated with the use of full-size construction plans. In the past, VA has required that builders provide construction plans in a large size working drawing format. These oversized sheets are bulky and awkward to handle and store. Therefore, builders and lenders submitting requests involving proposed construction are encouraged to submit construction exhibits in a reduced-size format. Building plans, elevations, and details that are traditionally drawn at 1/4 inch scale and larger, can be photographically reduced or computer-drawn to be clearly readable on 8.5 by 14 inch sheets. Exhibits that are normally provided in a smaller format, such as specifications on VA Form 26-1852, Description of Materials, calculation sheets, manufacturer's detail sheets, and certifications, will not be further reduced.

c. Required exhibits include complete working drawings, properly certified in accordance with paragraph 13.12b, including plot plans showing grade levels and the location of the well and septic system,

if applicable, foundation or basement plans, plans of all floors, all exterior elevations, sectional wall details, heating and cooling load calculations and layout, and specifications on VA Form 26-1852.]

[d.] In addition, when a veteran is under contract, a copy of the proposed or actual sales contract or purchase agreement must be provided. Submission of a sales contract may be deferred until a loan application is received for a CRV issued for an individual proposed or individual existing property not previously occupied. When the builder or sponsor elects to use the same form of sales contract or agreement with each appraisal request and the form has been approved by VA, arrangements may be made to have a code number or symbol assigned to the sales contract or agreement. Subsequent appraisal requests may then be submitted without the sales contract or agreement attached by indicating in item 37 of VA Form 26-1805 the code number or symbol assigned by the VA regional office. If an executed contract of sale or agreement is submitted with an application for a loan on a form previously approved, the code number or symbol should be shown on the contract.

[e.] If the request involves a committee appraisal, a complete statement of the building program must be provided and include the following:

(1) Total number of dwellings to be built;

(2) Number of dwellings contemplated in the primary construction program;

(3) Anticipated starting and completion dates of the primary program;

(4) Arrangements in connection with construction, dedication, and maintenance of streets and utilities;

(5) A schedule of proposed sales prices for each type of dwelling structure and lot;

(6) A statement of any special assessments which the purchaser is to assume;

(7) A statement as to initiation of any proposed transportation schedules or community facilities to be constructed; and

(8) Additional exhibits and data as required by VA regional office release.

[f.] In MCRV and/or proposed individual cases involving repeats of a basic house, exhibits which have been previously accepted by VA may be cross-referenced and deemed to meet the requirements of subparagraph [c above. A revised plot plan which identifies the new

location and all required certifications, including the CABO Model Energy Code certification, must be submitted with the new request.] Sponsors wishing to use this procedure should so indicate when VA Form 26-1805 is submitted, completing items 29B and C. Since this is an optional procedure and may not be accepted by all VA regional offices, sponsors should check with the appropriate regional office prior to submitting an appraisal request using this procedure.

[g.] When the request involves properties to be covered by an insured 10-year protection plan, either evidence of enrollment or a letter of intent to enroll shall be included with the exhibits.

9.07 RIGHT OF THE SECRETARY TO REFUSE TO APPRAISE RESIDENTIAL PROPERTIES

a. VA will deny to builders, owners, or sponsors of proposed or existing residential dwellings the opportunity to use the procedures incorporated in this handbook and will refuse to have appraisals made or otherwise participate in any activity involving CRVs when veterans have been substantially prejudiced by failure or refusal of the builder or sponsor to correct any construction faults, violation of VA MPRs, or deviation from plans and specifications or other contractual obligations on houses previously built by the builder or sponsor and sold with loans guaranteed or insured by VA. Appraisal will also be denied when a contract of sale or marketing methods or practices were unfair or prejudicial to the veterans under standards set by the Secretary. (See 38 CFR 36.4361.)

b. In this connection, notice of refusal to appraise and reason therefore will be supplied to the requester. Allegations by builders that designated compliance inspectors previously approved the work do not absolve the builders. VA's policy is applied even if the builder or sponsor of a previous project uses a different name or entity.

9.08 PROCESSING OF APPRAISAL REQUESTS

a. Unacceptable Requests. When the request for appraisal (VA Form 26-1805) is not properly completed or is not accompanied by the required supporting documents or is otherwise unacceptable, the entire submission is returned by the VA regional office to the requester. A new case number will be assigned to resubmissions

or the original request may be held in a suspense status under the same number until the required information is received.

b. Acceptable Requests

(1) Each acceptable request is checked against a geographic card file maintained by VA to determine whether there is a VA history of the property described on the VA Form 26-1805. The history is reviewed by an appraisal technician who determines whether a current appraisal is required. When the appraisal assignment is made by telephone, the geographic card file is checked by VA after the appraisal report is received. Information in the card file will be considered in the valuation process.

(2) A VA employee will make the appraisal assignment as an individual or committee appraisal case. For construction under HUD supervision, the request must be certified on VA Form 26-1805 that HUD inspections have been or will be made pursuant to HUD approval for mortgage insurance on proposed construction.

(3) Additionally, requests must include a certification that the plans, specifications and related exhibits, including HUD change orders, if any, are identical to those submitted or to be submitted to HUD, or which have been approved by HUD, supplying the appropriate HUD title; i.e., 203(b), 203(i), 221(d)(2) or 234(c).

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CHAPTER 10. REAL ESTATE APPRAISAL ASSIGNMENTS

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10.01 APPRAISAL ASSIGNMENTS

VA regional offices will assign appraisals only to fee appraisers whose professional ability and past performance warrant retention on the current roster of designated fee appraisers and who have been designated to appraise for VA in the area in which the property is situated. Favoritism or unfair discrimination in appraisal assignments is prohibited by Federal statute which requires that assignments be made on a rotational basis. Lenders who request appraisals from VA may not circumvent this requirement. Requests for assignment of a particular appraiser cannot be honored.

10.02 COMMITTEE APPRAISALS

a. Existing Construction. Appraiser(s) of committee appraisals of existing construction will submit Freddie Mac Form 70/Fannie Mae Form 1004, Uniform Residential Appraisal Report, for each unit covered by the request.

b. Proposed Construction. When the appraisal request involves proposed construction, the VA fee appraiser(s) will provide the following information in addition to the appraisal report(s):

(1) Identification of each basic type of structural unit and an estimate of the reasonable value for each;

(2) A narrative analysis of the project;

(3) Advice as to whether the reasonable value can be increased by the inclusion of variations from a basic type or by installation of items of equipment (easily removable), and the value ascribed to each such variation of item of equipment;

(4) The number or legal description of each building site or lot and separate valuation of each such site in accordance with its relative size and desirability;

(5) A complete schedule of the properties involved, indicating the type of structure to be erected on each lot with total estimate of reasonable value assigned to each property unit consisting of land and basic improvements, or a complete schedule of individual lot values providing for the substitution of appropriate models on individual lots; and

(6) The extent of offsite improvements considered in estimating reasonable value.

[c. In most committee cases, one appraiser will be assigned to complete the appraisal assignment. However, when a station decides, at its discretion, to assign more than one appraiser to a case, it is up to the appraisers involved to ensure that the assignment is acceptably completed within the established timeliness standards. The fee for such assignments is determined in accordance with paragraph 15.02c(1).]

10.03 ALTERATIONS, IMPROVEMENTS, OR REPAIRS TO REAL ESTATE

When alterations, improvements, or repairs costing in excess of $3,500 are involved, the VA fee appraiser is instructed to estimate reasonable value both on an "as is" and an "as repaired basis and to disclose the full extent of the alterations, improvements, or repairs.

10.04 DEFAULT, ACQUISITION, OR LIQUIDATION

a. Requests for default, acquisition, or liquidation appraisals from holders or servicers are made using the telephone procedure described in paragraph 9.01a(5)(a). After the VA the name of the assigned appraiser, the assignment clerk provides requester information to complete the name and telephone number of the current or last known occupants will be provided to the fee appraiser. If the property is vacant, the holder or servicer must provide adequate instructions for the appraiser to use in arranging to gain access to the property, such as the name and telephone number of a local individual to contact.

b. Liquidation appraisals completed by VA are market value appraisals; i.e., the price the property can command if exposed for sale in the open market allowing a reasonable time to find a purchaser. It is not an appraisal of value under forced sale or foreclosure conditions. In no case will a VA regional office refuse to reconsider the established value when requested to do so by a party of interest.

10.05 RELEASE OF REAL PROPERTY SECURITY

When the request is for release of real property security, the lender must send the VA regional office a letter of request which clearly indicates which portion of the property is to be released. The appraiser will complete the report and provide the regional office with an estimate of the reasonable value of the property as a whole on an "as is" basis, and an estimate of the value of that portion of the property which will remain as security if the release is approved. A formal appraisal is not required if, in the opinion of the staff appraiser reviewing the

case, the data received with the request and other information available is sufficient for a staff appraiser to determine the fair market value of the property being released and the value of the security remaining.

10.06 FARM RESIDENCES

When the request is for the purchase, construction, refinance, repair, or alteration of a farm residence under 38 U.S.C. 1810(a), the VA appraiser will consider the following in estimating the reasonable value:

a. The value of land area for the dwelling and its supporting uses determined by the market data (comparison) approach. Installed facilities serving the dwelling are considered to be part of the dwelling when, in the opinion of the appraiser, such appurtenances contribute to the desirability and residential aspects of the property (i.e., wells, septic tanks). Other buildings are valued on the basis of the use of the property for residential purposes only.

[ ]

[b.] The market approach will be used to value only that portion of the farm land suitable in size and location as an independent home site including supporting uses (i.e., well, septic system, outbuildings, access road). Land which is excess to that necessary to serve the home is valued as raw, undeveloped, and uncultivated land. The amount of land appropriate for a home site is determined by what is typical for sites in the area.

[c. This policy may present difficult appraisal problems for the fee appraiser, and for field station personnel, in some instances. Appraisals of properties which include farm residences should not generally present difficulties when there are a sufficient number of similar farm type properties that have recently sold in the area on the basis of their residential use. Valuation becomes more difficult when sufficient sales data is not available and/or the property or property size is atypical for the area.

d. The valuation of "excess land" as raw, undeveloped, and uncultivated land should be based on valid market data and consider what value contribution the excess land provides to the property as a whole considering it as a residence and not as a farm.]

10.07 APPRAISAL OF RESIDENTIAL PROPERTIES NEAR AIRPORTS

The purpose of this paragraph is to state VA policy and procedures relative to residential properties located near major civilian airports and military air bases. This paragraph also

sets forth the circumstances under which VA will decline to appraise residential properties within certain noise rating zones. VA must recognize the possible unsuitability for residential use of certain properties and the probable adverse effect on livability and/or value of homes in the vicinity of major airports and air bases. Such adverse effects may be due to a variety of factors including noise intensity.

a. Appraisal Principle Involved. The adverse effects of being located close to an airport is considered on an individual basis. The effect on value is considered in the market data analysis in the appraisal process.

b. Airport Files. Each VA regional office establishes and maintains a separate airport file for each major civilian and military airport within its jurisdiction.

(1) Civilian Airports. Some civilian airports have hired consultants to complete noise studies or studies which include noise data. These studies are used by regional offices in carrying out VA policy involving the appraisal of residential properties near airports.

(2) Military Airports. The military services have adopted AICUZ (Air Installation Compatible Use Zone) reports for many of the major air bases throughout the country. The AICUZ concept was designed to promote land-use development near military airfields in a manner which would protect adjacent communities from the noise and safety hazards associated with aircraft operations and also to preserve the operational integrity of the airfields. AICUZ reports assess levels of aircraft noise exposure and accident potential and specify a wide variety of types and intensity of land usage by a series of districts which consider these two factors.

c. Airport Noise Zones. The following chart classifies noise levels into a set of noise zones according to the most commonly used environmental noise descriptors:

Noise Zone	CNR (Composite Noise Rating)	NEF (Noise Exposure Forecast)	DNL Day/Night Average Sound Level)
1	Under 100	Under 30	Under 65
2	100 - 115	30 - 40	65 - 75
3	Over 115	Over 40	Over 75

d. Specific Limitations

(1) Proposed or existing properties located in noise zone 1 are generally acceptable as security for VA-guaranteed loans.

(2) Proposed construction to be located in noise zone 2 is acceptable provided:

(a) Sound attenuation features are built into the dwelling to bring the interior DNL of the living unit to 45 decibels or below; and

(b) There is evidence of market acceptance of the subdivision in which the property is to be located; and

(c) The veteran-purchaser signs a statement which indicates his/her awareness that the property being purchased is located in an area adjacent to an airport, and the aircraft noise may affect normal livability, value, and marketability of the property.

(3) Proposed construction to be located in noise zone 3 is not generally acceptable. The only exception is a situation in which VA has previously approved a subdivision and the airport noise contours are subsequently changed to include the subdivision in noise zone 3. In such cases, VA will continue to process loan applications provided the requirements in subparagraphs (2)(a), (b) and (c) above are met.

(4) Existing dwellings in noise zones 2 and 3 are not rejected by VA because of airport influence if there is evidence of acceptance by a fully informed veteran. No existing property will be rejected because of airport influence if that property is the security for an outstanding VA loan. The effect on value, if any, of a property located in an airport noise zone will be considered by the fee appraiser in the appraisal process.

(5) When requests are received to appraise properties located in close proximity to airports, in addition to making determinations concerning their location in noise zones, it should also be determined whether the property is located in a runway clear zone, clear zone, or accident potential zone (see par. 10.08).

10.08 AIRPORT CLEAR ZONES AND ACCIDENT POTENTIAL ZONES

In addition to considering noise zones, regional offices will determine whether properties in close proximity to airports are located in clear zones or accident potential zones.

a. Clear Zones. Both the Department of Defense and the FAA (Federal Aviation Administration) have programs designed to bring the highest accident risk areas, called runway clear zones at civil airports and clear zones at military airfields, under the control of the airport operator, thus ensuring that no incompatible development takes place. These zones are located immediately beyond the ends of a runway. Even though these programs have been in existence for a number of years, there are still areas that are not controlled by the airport operators.

(1) Proposed Construction. VA regional offices will not accept requests for appraisal of proposed construction located in the runway clear zones of civil airports and the clear zones of military airfields.

(2) Existing Construction. Existing dwellings located in runway clear zones and clear zones are eligible for VA guaranteed financing provided:

(a) There is evidence of market acceptance of the subdivision or area in which the property is located; and

(b) The veteran-purchaser signs a statement which indicates his/her awareness that the property is located in a clear zone and that this may have an effect upon value and marketability of the property. Such properties are probably also located in noise zone 2 or 3, and the acknowledgment should address this issue (see par. 10.07d(2)(c)).

b. Accident Potential Zones. AICUZ reports completed for military airfields identify areas beyond the clear zones which also have significant potential for accidents. These areas have been labeled as accident potential zones. Civilian airports do not identify accident potential zones.

(1) Proposed Construction. Military AICUZ reports discourage residential development in accident potential zones. However, appraisals for proposed construction in accident potential zones may be acceptable provided the project in which the properties are located is consistent with the recommendations found in the AICUZ report for the applicable airfield, and:

(a) There is evidence of market acceptance of the subdivision or area in which the property is located; and

(b) The veteran-purchaser signs a statement similar to that found in subparagraph a(2)(b).

(2) Exiting Construction. Existing construction located in an accident potential zone is eligible for VA guaranteed financing provided the requirements of subparagraphs (a) and (b) above are satisfied, and the property is otherwise eligible.

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CHAPTER 11. REVIEW OF APPRAISAL REPORTS

CHAPTER 11. REVIEW OF APPRAISAL REPORTS

11.01 AUTHORITY

Each appraisal made by designated fee appraisers is reviewed by a VA staff appraiser and adjusted as necessary. The amount determined to be proper constitutes the reasonable value of the property for loan guaranty purposes. (See 38 CFR 36.4340(b).) Appraisal reports are reviewed to determine that the appraiser's conclusions are consistent, sound, supportable, logical, and prepared in accordance with acceptable appraisal techniques and standards and VA instructions.

11.02 GUIDELINES FOLLOWED BY VA IN THE REVIEW OF APPRAISAL REPORTS

a. The appraisal principles applicable to the appraisal of real estate apply equally to the review of the fee appraiser's report. It must be determined that the value estimate is sound and that the appraisal report has been prepared in accordance with accepted appraisal techniques.

b. VA fee appraisers must analyze sales made both with and without VA financing to insure that reasonable values, when established, do not exceed prices at which similar properties can be purchased in the current market. Generally, data analyzed should not be more than 12 months old and should consist, whenever possible, of a VA, HUD (Department of Housing and Urban Development), and conventional transactions. It is recognized, that, in some instances, all-VA, all-HUD, or all-conventional transactions may represent the most reliable sources of comparable sales data and strict adherence to the general guideline for use of a "mix" of comparables could result in unrealistic values.

c. In cases involving conversion of HUD conditional commitments to VA CRV's (VA Form 26-1843, Certificate of Reasonable Value), the HUD valuation on HUD Form 92800.5b, HUD Conditional Commitment/Direct Endorsement Statement of Appraised Value, and the remaining economic life of the property on the form are generally accepted by VA in establishing maximum reasonable value and remaining economic life subject to the specific commitment conditions shown on HUD Form 92800.5b. When HUD Form 91322, Master Conditional Commitment/Master Appraisal Report, is the basis for the value determination, the reasonable value amount is calculated by adding the appropriate amounts from the "Estimate of Value" column in section A and the "Lot Value Adjustment" column in section C. Entries for similar items on HUD Form 91322.2, Amendment to: Master Conditional Commitment/Master Appraisal Report, will be added to arrive at the reasonable value when that form is the basis for the value determination. Additionally, any variations or alternates in the contract of sale shown on HUD Form 91322.1 shall be part of the computation of the reasonable value.

d. VA fee appraisers should not generally use contract sales, unsettled sales or listings in the sales comparison analysis section of the appraisal report. VA will consider these data, in addition to closed sales, to support the time adjustments and the reasoning process in arriving at the valuation determination.

e. Sellers, builders or lenders may offer various sales or financing incentives such as interest rate buy downs, giveaways or the inclusion of non realty items with the transaction, closing costs customarily paid by the buyer, loan discount points and origination fees, among others. The fee appraiser should report the effects of incentives on the comparables used in the appraisal report when this information is available through reasonable investigation. It is recognized that the effect of creative financing or sales incentives on sales prices can vary in different locales. Adjustments as a rule are not based upon a dollar-for-dollar adjustment equal to the cost of the incentives to the seller. The amount of the adjustment should be based on the real estate market reaction to the incentive. In all instances, the fee appraiser must explain the basis for any adjustments for financing or sales incentives. Additionally, in proposed construction cases, the fee appraiser should consider closed sales, resales of similar properties, and sales of competing builders and other sellers to determine if adjustments for financing or sales incentives are appropriate.

f. Any appraisal report is unacceptable if it is found that the fee appraiser's analysis is not based upon recognized appraisal practices and was intended to "accommodate" or "meet" the sale price.

g. VA regional offices may not arbitrarily establish areas with a prescribed limitation on economic life such as a 10-year limit on "center city areas" or 30 years in very good residential sections. Each property's economic life must be based on known economic and physical factors. An economic life of 30 years or more should be established at its predictable maximum; e.g., 40 years. The economic life should not be established at 30 years merely because 30 years is the maximum loan term.

h. Appraisal reports that are incomplete, lack clarity, or are otherwise unacceptable will not be processed until appropriate information is obtained from the fee appraiser or other source.

11.03 VALUING EASILY REMOVABLE AND/OR BUILT-IN EQUIPMENT, APPLIANCES OR DEVICES

When the request for appraisal indicates that easily removable and/or built-in equipment, appliances or devices are included in the sales price and are to be considered in the appraisal report, the following procedures apply:

a. Items considered necessary by the typical family which contribute to the livability of the home can be included in the estimated value on the appraisal report, and the estimated reasonable value on the CRV. These items include, but are not limited to: refrigerator, range/ovens, dishwashers, clothes washers, dryers, garbage disposals, vent fans, and wall-to-wall carpeting.

b. Items generally considered personal cannot be included in the appraised value and estimated reasonable value on the CRV. These items include, but are not limited to: blenders, mixers, fireplace equipment, furniture, drapes, and rugs.

c. The fee appraiser must identify the easily removable and/or built-in equipment items included in the appraised value by checking the appropriate blocks on the appraisal report.

11.04 DEFAULT, ACQUISITION, OR LIQUIDATION

a. All liquidation appraisals will be performed considering the property in its "as is" condition. "As is" means that the property is considered as it presently stands with whatever physical inadequacies that exist. The term "as is" does not imply that the property is in a poor state of repair. A property in a good state of repair with no physical inadequacies is also considered "as is." Fee appraisers are to make appropriate adjustments in the sales comparison analysis reflecting repairs and physical inadequacies (both MPR and non-MPR related) of the property at the time of the appraisal that are considered necessary and that affect value. The fee appraiser will provide an itemized list of all repairs (MPR and non-MPR) considered necessary and which affect the marketability of the property. An itemized list will show the estimated cost of each repair and its contributory value, if any. (In estimating contributory value, cost does not always equal value and, in some cases, several individual repair items must be considered in the aggregate before they are recognized by the general real estate market as contributing to value.) Fee appraisers must provide this information, and the supplemental information required by pars. (1) through (4) below as an addendum to the URAR (Uniform Residential Appraisal Report).

(1) A list and cost estimate of any emergency repairs or other repairs necessary to preserve or protect the property from vandalism or extreme weather conditions.

(2) If vacant, recommendations for draining the heating and plumbing systems, shutting off power lines, and locking doors and windows.

(3) If occupied, the occupant's name, period of occupancy, lease terms and expiration date, monthly rental, dates of payment and to whom payable.

(4) A minimum of two different photographic views of each major structure.

b. In considering the subject property in its observed "as is" condition, fee appraisers must select their comparables from the best available in the subject's market area considering the typical transaction and actions of the typical buyer and seller. Fee appraisers must not restrict themselves to comparables that are also in "as is" condition in the neighborhood or move to other locations for "as is" comparables, ignoring valid sales data immediate to the subject which, with adjustments), are valid indicators of value. Such "steerage" is not acceptable. Fee appraisers must use professional judgment in selecting the best comparables available, which represent the typical transaction in the subject's competing market area.

c. In addition to the three closed sales on the appraisal report form, liquidation appraisals require information on at least three competitive listings or contract offerings considered the most similar and proximate to the subject property and the general market information specified below. This information lends additional support to the value estimate and assists VA staff in evaluating competing market conditions and trends affecting the subject property, especially in areas that are experiencing significant market fluctuation. It also assists in ensuring that fee appraisers are rationalizing the closed sales data with current market conditions. The following information is required and will be provided as an addendum to the appraisal report.

(1) Competitive Listing or Contract Offering Information. (A clear readable copy of an MLS or listing data source card is acceptable for items (a) through (f) and (i).)

(a) Property address;
(b) Proximity to subject;
(c) Design (style);
(d) Total rooms, bedrooms, baths, and approximate gross living area;
(e) Age (years);
(f) Current listing price;
(g) How long on market (total time listed);
(h) Changes in listing price (if known);
(i) Contract amount (if known); and
(j) Short statement as to how this property compares to the subject.

(2) General Market Information

(a) Average length of listing time to sale in subject's competing market area. (Indicate if it is expanding or decreasing and to what extent.)

(b) Average listing price to sale price ratio. (Appraiser will use professional judgment to estimate the ratio if it cannot be determined from available data sources.)

d. Interior Access To Properties

(1) Interior access to the property is critical in the liquidation appraisal process in ensuring that a proper appraisal has been performed considering all existing conditions of the subject property in comparison with the comparable sales used in the sales comparison analysis. In vacant property cases, VA expects the lender/holder/servicer requester to have made arrangements to assist the fee appraiser in gaining interior access to the property. These arrangements should be made by the lender/holder/servicer as an integral part of the request process for liquidation appraisals. For occupied properties, the lender/holder/servicer should assist by providing known contact information about the occupants, and VA requires the fee appraiser to make diligent efforts in gaining interior access to the property.

(2) Title 38 CFR 36.4319(b) requires holders to provide VA with a copy of the liquidation appraisal request at least 30 days prior to the scheduled liquidation sale, or within 5 days after the date of first publication of the notice, whichever is later. VA will not consider the lender/holder/servicer's appraisal request acceptable unless the liquidation appraisal request form is appropriately completed with all required information, signed, and with adequate instructions to the appraiser regarding arrangements for interior access to the property. For occupied properties, the request must indicate the name and telephone number of the current or last known occupants. If the property is vacant, the appraisal request should indicate that keys to the property have been provided to the appraiser or the request must provide specific alternatives for the appraiser to use to gain access to the property, such as the name and telephone number of a local individual to contact. Appraisers are required to make diligent efforts to gain access to occupied properties. When properties are determined vacant, the appraiser must gain access and it is the lender/holder/servicer's responsibility to assist the appraiser in gaining such access. The appraiser will not, in most cases, complete an appraisal in vacant property cases until interior access has been made and upset price advice, or resale price advice in manufactured housing cases, will not be issued until an acceptable appraisal has been received. In such cases, VA liability will be limited through the application of 38 CFR 36.4319(f) as of the originally scheduled sale date or 36.4282(f) in manufactured home cases (if liquidation is not already completed through repossession or other means). When liquidation involves judicial action in manufactured home cases, 38 CFR 36.4282(f) will be applied as of the scheduled sale date.

(a) In occupied property cases, an exterior appraisal may be performed only when:

1. The appraiser has been refused entry permanently by the owner or occupants; or,

2. Access is considered by the appraiser to present a hazard; or,

3. The appraiser has made three appointments, all of which have been broken; or,

4. Three or more attempts to call the number(s) provided with the liquidation appraisal request have resulted in no access.

The fee appraiser will document the addendum to the appraisal report with the reason(s) for not gaining access, including names, dates, and telephone numbers of the individuals called in attempting to gain access. In these cases, the appraiser will make reasonably founded assumptions about the interior conditions of the property as they relate to physical inadequacies or needed repairs (both MPR and non-MPR) that have an impact on value. The appraiser will also make reasonable efforts to verify the interior conditions of the subject property (through MLS or other listing data sources, property assessment records, interviews with neighbors or others knowledgeable with the property, or any other available means).

(b) In addition to paragraph d(2) above in vacant property cases, the following applies:

1. If the appraisal request involving a vacant property does not provide adequate instructions for gaining interior access, or the appraiser determines that an occupied property has since been vacated, the fee appraiser must contact the requester by telephone to advise that the appraisal cannot be completed without interior access and that the requester's assistance in gaining access is required. The fee appraiser must document the appraisal report, or the addendum, with the dates and names and telephone numbers of the lender/holder/servicer contacts in attempting to get assistance to gain access to the property and a brief description of the responses) received.

2. There may be extenuating circumstances which affect the lender's or holder's ability to assist the appraiser in gaining interior access to vacant properties. If so, lenders or holders should advise the VA office of jurisdiction, which will then review the matter and provide a decision to the lender or holder.

[e. Unavoidable delays in fee appraiser access can occur as a result of the holder being remotely located from the property, the veterans avoiding contact with the fee appraiser or missing appointments, the property being abandoned or adversely occupied. However, just as with origination cases, not all liquidation appraisal delays are unavoidable. For instance, holders might delay notifying the fee appraiser of the assignment, or the appraiser's attempts to gain access to the property might not be timely. Field stations are expected to exercise the management control necessary to overcome avoidable appraisal delays. Failure to control such delays causes them to worsen over time, ultimately resulting in an increase in missed foreclosure sales. VA will take appropriate administrative action against fee appraisers who fail to cooperate after being counseled by VA. Holders who fail to provide appraisers with timely assignment notices after being counseled by VA can be required to submit appraisal requests in writing. The provisions of 38 CFR 36.4319(f) or 36.4282(f) may also be applied.

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CHAPTER 12. CERTIFICATES OF REASONABLE VALUE

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12.01 AUTHORITY

a. VA regional offices have the authority to limit the number of units which will be included on an MCRV (VA Form 26-1843a, Master Certificate of Reasonable Value) to the number which, in their opinion, can be successfully marketed during the validity period. A regional office will not entirely discontinue the issuance of either master or individual CRV's (VA Form 26-1843, Certificate of Reasonable Value) on speculative housing in any area without prior approval of VA Central Office.

b. VA regional offices are authorized to limit the number of items of easily removable equipment and other optional items in each MCRV issued.

12.02 INDIVIDUAL CERTIFICATE

VA Form 26-1843 is used to notify the appraisal requester of the reasonable value established by VA for a single property. [ ] [A] copy of the appraisal report will accompany the CRV sent to the requester. Photographs or copies of photographs will not be sent.

12.03 MASTER CERTIFICATE

a. VA Form 26-1843a is used to advise interested parties of the reasonable values established for proposed construction when the appraisal request involves five or more similar properties. [A copy of the reviewed Uniform Residential Appraisal Report(s) will accompany the MCRV being sent to the requester.]

b. The VA regional office is authorized to issue individual CRV's for each unit covered by the committee appraisal when it is determined that an individual CRV is beneficial to VA and other parties concerned.

12.04 ESTIMATED REASONABLE VALUE INDICATED ON THE CRV/MCRV

The valuation on the CRV or MCRV is valid during the validity period if the conditions on the CRV/MCRV are complied with. However, a valuation may be reduced, withdrawn, or modified by VA during the validity period if the facts in the case demonstrate that VA made a substantial administrative error or that fraud or misrepresentation caused the value to be inaccurate. The reasonable value indicated on the CRV/MCRV is established in accordance with the following:

a. Individual Certificates of Reasonable Value. All [CRV's and MCRV's] except those cases in which VA Property management has requested a CRV on a VA-owned property, are issued in the

amount determined by VA to be the reasonable value of the property, irrespective of the relationship of such value to the known or proposed sale price; or, in connection with refinancing, irrespective of the relationship of such value to the proposed refinancing loan amount.

b. Master Certificates of Reasonable Value. [The value for variations or optional items of equipment in MCRV cases will not exceed the amount being requested by the builder.)

12.05 VALIDITY PERIOD

a. A CRV for existing construction is valid for 6 months and, for proposed construction, 6 to 12 months. When a veteran enters into a contract to purchase within the validity period, the CRV remains effective after the validity period until the sale is either completed or otherwise terminated.

b. Before extending the validity period of an outstanding individual or master CRV, the VA regional office must determine that the original reasonable value(s) will remain valid through the extended period.

c. Before an extension of the validity period is granted for an MCRV or CRV issued with a 12-month validity period, a reappraisal and physical inspection of the property should be made by the VA regional office, unless determined not necessary.

12.06 REQUIREMENTS COMMONLY PLACED ON CERTIFICATES OF REASONABLE VALUE

a. Wood Destroying Insect Information

(1) All CRV's for existing construction located in, areas subject to termite infestation will require a statement from a Pest Control Operator on VA Form 26-8850/HUD Form 92053, Wood Destroying Insect Information - Existing Construction. An exception to the use of VA Form 26-8850 is permitted in States where a State form is required (e.g., California and Florida). A copy of the statement must be forwarded by the lender with other closing papers for inclusion in the VA loan docket. The statement should contain an acknowledgment signed by the veteran-purchaser that he or she has received a copy.

(2) A Pest Control Operator must be licensed for such activities by a State or a member of a National or State organization which requires at least 2 years of experience in the insect control field as a prerequisite of membership, or be generally acknowledged by experience or reputation as technically qualified in the field of insect control, and who, by performance, is so recognized.

(3) Reporting of fungus growth or dry rot is not required in the statement of the recognized Pest Control Operator but staff and fee appraisers are not relieved of their responsibility to inspect and report evidence of dry rot as required on the appraisal report.

(4) If a report indicates structural damage from insect infestation and there is reason to believe that the condition has not been corrected a lender may, at its discretion, request a compliance inspection. To expedite sales closings, assignment to a fee compliance inspector may be by telephone, followed by written confirmation.

b. Health Authority Approval. If the CRV or MCRV indicates that health authority approval of an individual water and/or individual sewage disposal system is required, the approval should be indicated on the health authority's form or letter. If there are no local requirements, the maximum contaminant levels established by the Environmental Protection Agency apply. When the health authority does not provide this service, a licensed laboratory may be used for testing and certification.

c. Flood Insurance. The lender must require flood insurance when the security is located in an area designated by FEMA (Federal Emergency Management Agency) as a special flood hazard area. VA fee appraisers assist lenders in making this determination by indicating on the appraisal report whether or not the property is located in such an area. VA regional offices will indicate on the CRV or MCRV when flood insurance is required, but it is the lender's responsibility to assure compliance with 38 CFR 36.4326 and 36.4222 in maintaining adequate hazard insurance coverage on the property which secures a VA guaranteed loan.

d. Construction Warranty

(1) Each CRV issued for a proposed or newly constructed dwelling will be conditioned to require that the veteran-purchaser be provided with a fully completed VA Form 26-1859/HUD Form 92544, Warranty of Completion of Construction in Substantial Conformity With Approved Plans and Specifications. This warranty does not apply to the common elements of a condominium for which the developer must deliver a warranty on its own form or letter.

(2) VA will name the warrantor on the related master or individual CRV, and the warrantor's name will appear on the appraisal request. Warranty by the builder or seller is acceptable unless from the information available it appears that another real party of interest should be the warrantor. In the latter event, such party will be designated as the warrantor on the master or individual CRV. When title to the property in construction loan cases is vested in the veteran prior to completion of construction,

the warranty is required from the veteran's construction contractor. If the warrantor is a corporation, the warranty must be signed by an authorized officer of the corporation. (See also par. 6.25.)

e. Termite Soil Treatment Guarantee

(1) When soil treatment is specified and used in new construction, submission of VA Form 26-8375/HUD Form 92052, Termite Soil Treatment Guarantee, is required on the CRV or MCRV.

(2) One copy of VA Form 26-8375 will be sent to the regional office with VA Form 26-1820, Report and Certification of Loan Disbursement. The original and one copy will be retained by the mortgagee, who will provide the mortgagor with the original at closing.

f. Lead in Solders, Pipes and Pipe Fittings. A CRV for proposed construction and existing construction not previously occupied, and for substantial rehabilitation and alterations, improvements, or repairs which involve the potable water distribution system requires a certification that solders and flux, if used, do not contain more than 0.2 percent lead and pipes and pipe fittings do not contain more than 8.0 percent lead.

[g. Council of American Building Officials (CABO) Model Energy Code (MEC) The Energy Policy Act of 1992, requires that in order for a new residential property to be eligible for a government insured or guaranteed mortgage, it must have been constructed to comply with the energy conservation standards of the 1992 CABO Model Energy Code. Each CRV or MCRV for proposed construction, existing property enrolled in a 10-year protection plan, or existing not previously occupied property less than 1 year old (special exception), will be conditioned as follows:

"Provide a certification from the builder which identifies the dwelling and states that it was constructed to meet the energy conservation standards of the Council of American Building Officials (CABO) 1992 Model Energy Code (MEC)".

This requirement does not apply to manufactured housing that is inspected in the factory by the Department of Housing and Urban Development (HUD).

(1) An individual unit in a condominium project that is less than three-stories in height, must comply with the requirements of the 1992 CABO MEC. In high-rise condominium projects, the requirements of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1-1989 apply.

(2) The certification that the property was constructed to meet the energy conservation standards of the 1992 CABO MEC is required even when State or local energy-related requirements exceed, or are purported to exceed, the CABO standard.]

[h.] Properties Enrolled in an Insured 10-Year Protection Plan

(1) To meet VA eligibility requirements, an insured 10-year protection plan must have been determined to be acceptable by HUD and listed on the current HUD "List of Active Insured 10-Year Protection Plans" (App. 10, HUD Handbook 4145.1) or other official HUD document.

(2) When proposed properties are enrolled in an insured 10-year protection plan, the CRV or MCRV will indicate that only a final inspection is required. The CRV or MCRV will also identify who is to complete the final inspection.

(3) When the enrollment in an insured 10-year protection plan is not submitted with the appraisal request, the CRV/MCRV will indicate that evidence of enrollment must be submitted to VA no later than the submission of the related loan report or certification of the loan disbursement.

(4) When an existing property is enrolled in an insured 10-year protection plan, the CRV will be endorsed as follows: "Provide written acknowledgment from the veteran-purchaser that he or she is aware that the property was not inspected during construction by either VA or HUD, and as such will not qualify for Government assistance in the correction of structural defects, and that VA will not intercede on the veteran's behalf in the processing of construction complaints."

[i.] Satisfaction of CRV Requirements When the Property Involved Was or Is Being Inspected by HUD During Construction. A countersigned final HUD Form 92051, Compliance Inspection Report, may be accepted as evidence of compliance with VA requirements corresponding to those listed under section III of the HUD form. Separate prefabrication and carpet certifications, individual sewage and water supply systems and termite treatment guarantees are not required by VA with requests for appraisal when the properties involved are being inspected by HUD during construction, nor will the carpet certification requirement be entered on CRV's in such cases.

12.07 SITUATIONS IN WHICH A CRV WILL NOT BE ISSUED

a. CRV's will be issued only for those properties which conform or will be made to conform to VA MPR's (minimum property requirements). An exception may be made when a veteran has contracted to buy an existing property which is habitable from the standpoint of safety, sanitation, and structural soundness but does

not completely conform to VA MPR's for existing construction. This property may be eligible if the veteran and lender request approval in writing after having been advised of the items not conforming to the MPRs, and the regional office is satisfied that all observable deficiencies have been taken into account in establishing the reasonable value of the property.

b. CRV's will not be issued for partial release of real property or for cases involving alterations, improvements, or repairs to realty costing less than $3,500 except when the appraisal is made by a designated fee appraiser assigned to the case by VA.

c. Cases in which VA is requested to convert HUD conditional commitments to VA CRVs are acceptable only if they were processed by HUD under sections 203(b), 203(i), 221(d)(2), or 234(c) of the National Housing Act. (See par. 9.01b.)

d. A CRV will not be issued if there is an outstanding CRV.

12.08 DISTRIBUTION OF CRV'S

a. A copy of the CRV will be sent to the requester and the veteran-purchaser. In individual proposed or individual existing construction cases, VA will mail the veteran's copy of the CRV to the veteran when known at the time the CRV is prepared. In prior approval cases, when the veteran is not known at the time the CRV is prepared, the veteran's copy is retained in the case file until the URLA (Uniform Residential Loan Application), or VA Form 26-1820 is received. Upon receipt of the URLA or VA Form 26-1820, the veteran's copy of the CRV is mailed to the veteran. For loans processed on the automatic bases, the veteran's copy of the CRV may be mailed to the veteran with the certificate of eligibility after the loan is guaranteed.

b. When VA Form 26-1843a is outstanding on a committee appraisal, VA Form 26-1843e, Notification of Reasonable Value, will be prepared for each property for which a loan application or loan report is received and mailed to the veteran.

c. In proposed construction cases, VA will provide a copy of the individual or master CRV to the compliance inspector when the construction is to be inspected by VA. A copy of the CRV will also be sent to the compliance inspector in existing construction cases where a fee inspector has been assigned to inspect completed repairs.

12.09 REQUESTS FOR RECONSIDERATION OF VALUE

a. The VA regional office will assure that the CRV is complete and accurate before it is distributed. The regional office will not refuse to reconsider the propriety of the CRV if requested in writing by a party of interest.

b. VA regional offices shall not require the requester to submit comparable sales or other market data with a request for reconsideration of value, but any supporting sales or other market data will assist the regional office in reviewing the reconsideration request. All supporting documentation voluntarily submitted by the requester, including any additional appraisals of the property, will be carefully considered by the regional office. When the requester supports a request for reconsideration of value by submitting an additional appraisal, the veteran cannot be required to pay all or any portion of the cost of the additional appraisal.

12.10 LIMITATIONS TO TITLE - PROCEDURE UNDER 38 CFR 36.4350(b) AND (c)

a. If requested, VA will consider conditions or limitations not shown on the CRV and discovered by the lender or other interested party subsequent to examination of the title and prior to loan closing and advise whether the reasonable value is affected. When VA staff appraisal technicians have insufficient information to determine the effect of such conditions or limitations on reasonable value, additional information will be requested from the fee appraiser. When the reasonable value was based upon a HUD conditional commitment, the effect on value of limitations to title not contained in 38 CFR 36.4350 must be reviewed by HUD and then forwarded to the lender. VA will not process these requests by lenders since they must be submitted to HUD. (See also par. 6.23.)

b. VA does not consider that the below listed conditions or limitations to title materially affect the reasonable value of residential property, whether or not enforceable by a reverter clause, provided there has been no breach of the conditions affording a right to exercise the reverter clause:

(1) Building or Use Restrictions, provided no violation exists and the proposed use by the veteran does not presage a violation.

(2) Violations of Building of Use Restrictions of Record which have existed for more than 1 year, are not the subject of pending or threatened litigation, and do not provide for a reversion or termination of title, condemnation by municipal authorities, or a lien for liquidated damages which may be superior to the lien of the guaranteed or insured mortgage.

(3) Easements

(a) Easements for public utilities along one or more of the property lines and easements for drainage or irrigation ditches, provided the exercise of the rights of such easements do not interfere with the use of any of the buildings or improvements located on the subject property.

(b) Mutual easements for joint driveways located partly on the subject property and partly on adjoining property, provided the agreement is recorded in public records.

(c) Easements for underground conduits which are in place and which do not extend under any buildings on the subject property.

(4) Encroachments

(a) By improvements of the adjoining property when the encroachments do not exceed 1 foot of the boundaries, provided the encroachments do not touch any buildings or interfere with the use or enjoyment of any building or improvement on the subject property.

(b) By hedges or removable fences belonging to subject or adjoining property.

(c) Not exceeding 1 foot on adjoining property by driveways belonging to subject property, provided there is clearance of at least 8 feet between the buildings on the subject property and the property line affected by the encroachment.

(5) Variations of lot Lines which consist of variations between the length of the subject property lines as shown on the plot plan or other exhibits submitted to VA and as shown by the record or possession lines, provided such variations do not interfere with the current use of any of the improvements on the subject property and do not involve a deficiency of more than 2 percent of the length of the front line, or more than 5 percent of the length of any other line.

12.11 HUD/VA RECIPROCITY

Although HUD's valuation (estimated value of property) and estimated economic life of the property control establishment of the maximum reasonable value and estimated economic life in conversion cases, it does not imply that VA acceptance of the conditional commitment is automatic. The converting VA office carefully reviews the HUD conditional commitment, and the appraisal report in appropriate cases, and issues the CRV only after it is satisfied that the HUD conditional commitment has been issued by a HUD official and is otherwise considered proper.

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CHAPTER 13. VA MINIMUM PROPERTY REQUIREMENTS

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13.01 PURPOSE AND SCOPE

[a. Proposed Construction. VA MPR's (Minimum Property Requirements) provide general acceptability criteria for the construction of housing and define certain minimum levels of quality acceptable to VA. Where local codes are enforced, the MPR's are to be used in conjunction with the local code. Where local codes are not enforced, or in the absence of local codes, the MPR's are to be used in conjunction with the current edition of the Council of American Building Officials (CABO) One and Two Family Dwelling Code. Additionally, for a new residential property to be eligible for a government insured or guaranteed mortgage, it must have been constructed to comply with the energy conservation standards of the 1992 CABO Model Energy Code (MEC). (See par. 12.06g.)

b. Existing Construction. VA MPR's for existing construction provide general acceptability criteria for dwelling units which were completed prior to the submission to VA. These requirements provide a basis for determining that the property is structurally sound, safe and sanitary and meets the standards considered desirable in a permanent home in its locality.]

13.02 VA MINIMUM PROPERTY REQUIREMENTS FOR PROPOSED CONSTRUCTION

a. In all proposed construction cases, VA requires compliance with 24 CFR 200.926d, Construction Requirements, in addition to any State, county, or local building codes in the jurisdiction where the property is located [and the 1992 CABO Model Energy Code]. In the absence of State, county or local building codes, VA MPR's are the applicable provisions of the current CABO [] One and Two Family Dwelling Code. When the CABO One and Two Family Dwelling Code applies, the requirements of 24 CFR 200.926e, and the appendix to Part 200, Standards Incorporated by Reference, apply.

b. Methods, practices, and materials required, advocated, or approved in HUD (Department of Housing and Urban Development) bulletins for new materials and methods of construction.

c. As applicable, standards and practices recommended in HUD Handbooks 4140.1, Land Planning Principles for Home Mortgage Insurance; 4140.2, Land Planning Procedures and Data for Insurance for Home Mortgage Programs; and 4140.3, Land Planning Data Sheet Handbook, are referred to as VA Minimum Land Development Requirements.

d. Lead-based paint shall not be specified or used on any interior or exterior surface for any individual proposed property or any property included in a proposed committee appraisal case.

e. Housing Credit Shortage Areas. The minimum property requirements for proposed construction are found in VA Pamphlet 26-1, Minimum Property Requirements for Proposed Construction in Areas Designated by the Secretary of Veterans Affairs as "Housing Credit Shortage Areas."

f. High-Pressure Gas and Liquid Petroleum Transmission Lines

(1) No part of any residential structure can be located less than 10 feet from the outer boundary of the pipeline easement. If a residential structure will be located 10 feet or more from the outer boundary of the pipeline easement, but within an area that extends 220 yards on either side of the centerline of the transmission line, the CRV/MCRV (certificate of reasonable value/master certificate of reasonable value) must be conditioned for the following:

(a) For high-pressure gas pipelines, a statement from an authorized official of the pipeline company must be submitted certifying compliance with 49 CFR 192.607, 192.609, 192.611 and 192.613.

(b) For liquid petroleum pipelines, a statement from an authorized official of the pipeline company must be submitted certifying that the pipeline complies with section 195, 49 CFR and all amendments thereto.

(2) Pipeline companies maintain records of the statements per agreement with the Department of Transportation as recorded in the Federal Register, Volume 35, Number 161, dated August 9, 1970.

(3) Statements received by VA will be maintained in a file for future reference.

g. High Voltage Electric Transmission Lines. No dwelling or other improvement which may become the security for a VA guaranteed loan can be located within the transmission line easement.

13.03 VA MINIMUM PROPERTY REQUIREMENTS FOR EXISTING CONSTRUCTION

a. These requirements for existing housing, together with appropriate administrative rules and regulations, prescribe the basic qualifications necessary for eligibility of existing properties.

(1) Real Estate Entity. The property shall comprise a single readily marketable real estate entity.

(2) Party or Lot Line Wall

(a) A building constructed on or to a property line shall be separated from the adjoining building, by a wall extending the full

height of the building from the foundation to the ridge of the roof. The wall can separate row type townhouses or semi-detached units.

(b) There must be adequate space between buildings to permit maintenance of the exterior walls.

(3) Services and Facilities

(a) Trespass. Each living unit must be able to be used and maintained individually without trespass upon adjoining properties. Any easements required must run with the land.

(b) Utilities. Utilities shall be independent for each living unit except that common services, such as water, sewer, gas, and electricity, may be provided for living units under a single mortgage or ownership. Separate utility service shut-offs for each unit shall be provided. For living units under separate ownership, common utility services may be provided from the main to the building line when protected by easement or covenant and maintenance agreement acceptable to VA. Individual utilities serving a living unit shall not pass over, under, or through another living unit, unless provision is made for repair and maintenance of utilities without trespass on adjoining properties or legal provision is made for permanent right of access for maintenance and repair of utilities.

(c) Other Facilities. Other facilities must be independent of each living unit, except that common services, such as laundry and storage space or heating, may be provided for in two-to-four living unit building under a single mortgage.

(4) Required Provisions

(a) Each living unit must contain the following:

1. A continuous supply of safe and potable water.

2. Sanitary facilities and a safe method of sewage disposal.

3. Heating adequate for healthful and comfortable living conditions. Regional offices may determine that climatic conditions are such that mechanical heating is not required.

4. Dwellings with wood burning stoves or solar systems used as a primary heat source must have permanently installed conventional heating systems that maintain at least 50 degrees Fahrenheit in areas containing plumbing systems.

5. Domestic hot water.

6. Electricity for lighting and for equipment used in the living unit.

(b) When individual water supply and sewage disposal systems apply, the following shall be required:

1. Water quality shall meet the requirements of the health authority having jurisdiction. If the local authority does not have specific requirements, the maximum contaminant levels established by the EPA (Environmental Protection Agency) shall apply.

2. If the authority is unable to perform the water quality analysis in a timely manner, a private, commercial testing laboratory or a licensed sanitary engineer acceptable to the authority may take and test water samples.

3. Each living unit must be provided with a sewage disposal system adequate to dispose of all domestic wastes in a manner which will not create a nuisance, or in any way endanger the public health.

4. Individual pit privies are permitted where such facilities are customary and are the only feasible means of waster disposal, provided they are installed in accordance with the recommendations of the local Department of Health or, in the absence of such recommendations, with the requirements of the U.S. Public Health Service publication "Individual Sewage - Disposal Systems."

5. Connection must be made to a public or community water/sewage disposal system whenever feasible.

(5) Nonresidential Use - Design Limitations

(a) Any nonresidential use of the property shall be subordinate to its residential use and character. A property, any portion of which is designed or used for nonresidential purposes, is eligible only if the type or extent of the nonresidential use does not impair the residential character of the property.

(b) Areas designed or used for nonresidential purposes shall not exceed 25 percent of the total floor area. Storage areas or similar spaces which are integral parts of the nonresidential portion shall be included in the total nonresidential area.

(6) Access - Streets

(a) Each property must be provided with a safe and adequate pedestrian or vehicular access from a public or private street.

(b) All streets must have an all-weather surface.

(c) Private streets must be protected by permanent easements and maintained by a homeowners association or joint maintenance agreement.

(7) Access to the living unit must be provided without passing through any other living unit.

(8) Access to the rear yard must be provided without passing through any other living unit. For a row-type dwelling, the access may be by means of alley, easement, passage through the dwelling, or other acceptable means.

(9) Defective Conditions. Defective construction, poor workmanship, evidence of continuing settlement, excessive dampness, leakage, decay, termites, or other conditions impairing the safety, sanitation or structural soundness of the dwelling shall render the property unacceptable until the defects or conditions have been remedied and the probability of further damage eliminated.

(10) Space Requirements. Each living unit must be provided with space necessary to assure suitable living, sleeping, cooking and dining accommodations and sanitary facilities.

(11) Mechanical Systems. Mechanical systems must be safe to operate, be protected from destructive elements, have reasonable future utility, durability and economy, and have adequate capacity and quality.

(12) Ventilation. Natural ventilation of structural space such as attics and crawl spaces, will be provided to reduce the effect of conditions of excess heat and moisture which are conducive to decay and deterioration of the structure.

(13) Roof Covering. Roof covering must prevent entrance of moisture and provide reasonable future utility, durability and economy of maintenance. When reroofing is needed for a defective roof, already consisting of three layers of shingles, all old shingles must be removed prior to re-roofing.

(14) Hazards. The property must be free of hazards which may adversely affect the health and safety of the occupants or the structural soundness of the improvements, or which may impair the customary use and enjoyment of the property by the occupants. The hazards can be subsidence, flood, erosion, defective lead base paint, or the like.

(15) Crawl Space. In order to insure against conditions which could cause deterioration to the building and seriously affect the marketability of the property, it is required that:

(a) There must be adequate access to the crawl space.

(b) The floor joists must be sufficiently above the highest level of the ground to provide access for maintenance and repair of ductwork and plumbing.

(c) The crawl space must be clear of all debris and properly vented.

(d) Any excessive dampness or ponding of water in the crawl space must be corrected.

(16) Drainage. The site must be graded so as to provide positive, rapid drainage away from the perimeter walls of the dwelling and prevent ponding of water on the site.]

b. Termite or Other Wood-Destroying Infestations - Existing Construction. Acceptability with respect to defects or conditions attributable to termite or other wood-destroying infestations shall be determined by submission of a written statement as described in paragraph 12.06a. The requirement for a termite inspection depends on the area of the country in which the property is located.

c. Lead-Based Paint. The use of lead-based paint is prohibited on applicable surfaces of any properties to be financed by VA. (See par. 13.11)

[d. High-Pressure Gas and Liquid Petroleum Transmission Lines. No part of any residential structure can be located less than 10 feet from the outer boundary of the pipeline easement. See paragraph 13.02f for proposed construction requirements.

e. High Voltage Electric Transmission Lines. No dwelling or other improvement which may become the security for a VA guaranteed loan can be located within the transmission line easement.

f. Well-Sharing Agreements. As stated in paragraph 13.03a(4)(b), properties which are served by individual water supplies shall be required to connect to a public or community water system whenever feasible. However, in those instances in which a public or community water system is not available or connection is not feasible, and the property shares a well with another property, the CRV must be conditioned to require a satisfactory well-sharing agreement. To be acceptable, a well must be capable of providing a continuing supply of safe and potable water to each property simultaneously, so that each dwelling will be assured a sufficient quantity for all domestic purposes. At a minimum, a well-sharing agreement must:

(1) Make reasonable and fair provisions for maintenance and repair of the system and the sharing of the costs to do so. These provisions must include a permanent easement which allows access for maintenance and repair;

(2) Be binding on the signatory parties and their successors in title; and

(3) Be recorded in local deed records.]

13.04 AMENDMENT TO VA MINIMUM PROPERTY REQUIREMENTS

a. Certain conditions common to a particular geographic area or occurring on the site may justify modification of specific standards, or make compliance impracticable or impossible. In these cases, variations are permitted.

b. Where modification to the minimum property requirements is requested, the following is applicable.

(1) When a veteran under contract to purchase a unit makes a written request for modification, all parties of interest (lender or sponsor, builder, and veteran) will be notified of the approval by VA. The letter of approval will conclude with this or a similar statement: "This approval is granted with the understanding that VA will not recognize complaints arising from conditions related to or attributable to the specific modification herein given." When reasonable value is affected, an amended CRV (VA Form 26-1843, Certificate of Reasonable Value) will accompany the letter of approval.

(2) When a builder, lender, or sponsor makes a written request for modification and certifies that the unit is not under contract to a veteran, an original and at least one copy of the [letter] of approval containing the statement stipulated in subparagraph (1) above is provided to the requesting party. It should include instructions that potential veteran-purchasers endorse the letter of approval or photocopy to the effect that the veteran is aware of the modification and it is acceptable and, when endorsed, return it to the applicable VA regional office. When reasonable value is affected, an amended CRV will accompany the letter of approval.

13.05 NEW MATERIALS AND METHODS

Construction involving unconventional methods or new materials is not prohibited by VA MPR's. Unconventional construction is generally considered to include factory fabrication of structural units and panels or sections which would conventionally be fabricated on site. VA encourages special methods of construction and new materials which have been developed to meet market conditions without sacrificing structural soundness and desirability. Unconventional methods and materials reviewed and considered suitable from a technical standpoint by HUD through special rulings issued in the form of engineering bulletins or material releases are applicable to VA. If the type of material or assembly proposed has not been acted upon by HUD, the matter should be referred to HUD for appropriate action.

13.06 ADAPTATIONS OF HUD PUBLICATIONS

In using the HUD publications listed in paragraph 13.02, the following adaptations will be observed:

a. All references to "HUD shall be read as applying to "VA."

b. All references to "HUD field office" shall be construed as "VA regional office."

c. "Insured mortgage" shall be construed as "VA-guaranteed or insured mortgage."

d. The CABO One and Two Family Dwelling Code and 24 CFR 200.926d and e are limited in application to residential properties containing one or two living units. However, the application for VA

purposes is extended to cover residential properties containing from one to four living units. Submissions to VA involving residential properties containing more than four living units are subject to requirements for specific situations.

13.07 PROPOSED CONSTRUCTION EXEMPT FROM VA MINIMUM PROPERTY REQUIREMENTS

a. The following categories of cases are exempt wholly or in part from the requirements stated in paragraphs 13.02 and 13.03:

(1) A dwelling unit constructed by a veteran for his or her own occupancy, whether the veteran constructed the dwelling or acted as his/her own general contractor.

(2) Single residential units to be constructed in remote areas, provided they are not otherwise ineligible; e.g., built within a proscribed airport noise zone.

b. The standards and requirements prescribed for existing construction shall be applied in cases processed under subparagraphs (1) and (2) above

13.08 EXISTING CONSTRUCTION EXEMPT FROM VA MINIMUM PROPERTY REQUIREMENTS

Provided proper allowances in the form of depreciation have been taken in establishing the reasonable value, the VA regional office is authorized to exempt an existing residential property from the applicable VA MPR's when a veteran is under contract to purchase the property and the veteran and lender request exemption after being advised of the deficiencies. Deficiencies which affect the safety, sanitation, or structural soundness of the property will not be waived.

13.09 VA REQUIREMENTS FOR PRIVATELY OR COMMUNITY-OWNED WATER AND SEWERAGE FACILITIES

a. Public Water and Sewerage Systems. In localities where comparable developments are served by public water and sewerage systems and such facilities are generally accepted as standard for the community, individual or community water and sewerage systems will be discouraged by VA. If the appropriate local authorities certify that public community facilities are feasible for the area, proposed construction with individual water or sewer facilities is prohibited. Requesters will be informed that an appraisal assignment will not be completed unless the local health authority of jurisdiction states in writing that it is not economically feasible to establish public or adequate community water and/or sewerage disposal facilities.

b. Individual or Community Water and Sewerage Systems

(1) In localities where public facilities are not generally available and individual or community systems are customary, careful study and investigation of the proposed system will be made by VA to assure against later faults, insofar as possible. If individual systems are contemplated, each will comply with the local health authority regulations. (For community water and sewerage systems requirements, see HUD Handbooks 4940.2, Minimum Design Standards for Community Water Supply Systems, and 4940.3, Minimum Design Standards for Community Sewerage Systems.) if community water and sewerage systems are contemplated, plans and documents will be submitted to VA indicating the type of system and the proposed organization to assure adequate continuous service at reasonable rates for the control, operation and maintenance of the facilities. (See HUD Handbook 4075.12, Central Water and Sewerage Systems (Ownership and Organization).) The required preliminary documents will include evidence of the financial stability and technical experience of the corporation, firm, or organization which will operate the facilities and must demonstrate that utilities will be properly managed. In addition, evidence of the approval of the installation of utilities by the appropriate State or local public utility and health authorities must be filed with VA. The rates established for the water supply

and sewerage disposal systems shall not be greater than the charges for like services to properties similarly situated. VA must besatisfied that the water supply will be sufficient for the demands of the project, that the quality of the water will be accepted and approved by the local or State health officials, and that the sewage disposal system is adequate and will be properly operated and maintained to prevent it from becoming obnoxious or a public nuisance or menace to public health. These preliminary documents must be prepared and submitted to the VA regional office by the sponsor prior to submitting the first request for appraisal in the project.

(2) In localities where legislative measures, relative to privately owned and operated community water and/or sewerage systems, do not empower the State Board of Health, Public Utility Commission, or similar State authorities to enforce compliance with their requirements, fix rates, and provide prompt relief in case of deficient operations or service or exorbitant rates, a trust deed will be required. The trust deed will be designed and established to assure satisfactory control and adequate protective measures.

(3) The forms of trust deed for water and sewerage (illustrated in HUD Handbook 4075.12) have been designed to assure satisfactory service at suitable rates and, with the required inserts, will generally be used without change or modification. The forms apply to privately owned community systems except that they will not apply to systems owned and operated by an acceptable property owners' association.

(4) When the trust deed discussed in subparagraph (3) above is used without modification, it will be acceptable if the regional office is satisfied that the trustee is a responsible firm, that the description of the property in the trust deed is accurate and complete, that the charges set forth are reasonable, and that the trustee's fee is reasonable, which will normally be approximately 5 percent and in no event in excess of 10 percent of gross receipts. The trustee will preferably be a supervised lender in the VA program or a HUD-approved mortgagee but may be any responsible and well-established firm (e.g., title company) in the community acceptable to the VA regional office. When the trustee is other than a supervised lender or an approved HUD mortgagee, there will be no identity-of-interest between the sponsoring group and the trustee.

(5) When the builder recoups his/her installation costs of the plant in connection with the sale of lots and the reasonable value is predicated on the inclusion of this cost in the value of the lots, the rate for services cannot allow the builder to recoup the installation costs a second time.

(6) When the reasonable value is established on the premise that the systems are installed and paid for in full by or for the builder or developer, then additional controls are needed for the protection of the homeowner against possible future excessive rates or assessment charges if the system is transferred to a public body or public utility company. To afford protection, the trust deed will provide that transfers may be made only to a government authority or public utility company controlled by a State utilities commission or similar body, and that any consideration accruing from such transfer shall be distributed among property owners served by the system. This protection will be obtained by insertion of an alternate paragraph I in the trust deed. (See HUD Handbook 4075.12, app. A, p. 11, or app. B, p. 11, as applicable.)

(7) The assurance of satisfactory service, at reasonable rates, without the possibility of a future charge to pay for the utility systems, or conversely, the contingency of future assessments will be reflected in the reasonable value estimate of the fee appraiser.

(8) If additional trust deed amendments are proposed or previously discussed conditions are not satisfied, the proposal will be reviewed by the legal staff in the VA regional office.

(9) Trust deeds will not be supplied as VA forms. As the occasion warrants, copies will be supplied by regional offices to builders and sponsors for preparation of trust deeds as necessary.

13.10 AREAS OF POTENTIAL GEOLOGICAL OR SOIL INSTABILITY

a. VA regional offices maintain current libraries of data on geological instability of geographic areas served. These data include reports, maps, and other types of information published by the U.S. Geological Survey and U.S. Corps of Engineers. All unstable areas and those subject to geological faults are delineated on appropriate maps. In areas considered susceptible to earthquakes, landslides, or with a history of unstable soils, the developer is required to submit evidence from recognized geologists and consulting engineers that the site will not present geological hazards or that any hazards will be compensated for in the engineering design of the improvements and structures. A recognized geologist is one licensed for the activity by a State or who is a member of a National or State organization which requires responsibility, experience, education and demonstrated ability in the field of engineering geology. This may be an individual or firm generally accepted as being technically qualified and who, by experience, has gained a reputation for integrity in geological engineering. Where localities or municipalities have adequate professional staffs and require submission of similar geological and engineering data, the requirements of the locality or municipality may be considered adequate for VA loan guaranty purposes. In other areas, advice as

to the qualifications of the geologists and engineers retained by the developer may be requested from the U.S. Geological Survey or the U.S. Corps of Engineers. In unusual circumstances, these agencies may be requested to review geological reports and engineering details submitted by the developer.

b. All VA regional offices maintain lists of sites rejected due to geological hazards.

13.11 LEAD-BASED PAINT

a. The use of lead-based paint is prohibited on applicable surfaces of any properties to be financed by VA. The following definitions apply:

(1) "Lead-based paint" means any paint or other similar surface coating materials containing lead or lead compounds which exceed the percentage of lead by weight permitted by law.

(2) "Applicable surfaces" means all interior and exterior surfaces.

(3) "Immediate hazard" means paint (which may contain lead) on applicable surfaces which is cracking, scaling, chipping, peeling, or loose.

(4) "Defective paint condition" means any paint on applicable surfaces which is cracking, scaling, chipping, peeling, or loose.

b. Procedures and Treatment Applicable to Appraisals and Compliance

(1) All defective paint conditions are assumed by VA to involve lead-based paint and to constitute immediate hazards that must be corrected, unless testing shows that lead is not present in the paint at a level above that permitted by law. (Most of the paint used in structures built in 1950 or earlier was lead based.)

(2) All applicable surfaces identified as immediate hazards or defective paint conditions shall receive adequate treatment to prevent the ingestion of contaminated paint. Particular care shall be taken to correct conditions of cracking, scaling, chipping, peeling, and loose paint before repainting. All such surface conditions which require treatment shall be thoroughly cleaned (washed, scraped, wire brushed, or otherwise cleaned) to remove all cracking, scaling, peeling, chipping, and loose paint on applicable surfaces and then repainted with two coats of a suitable nonleaded paint. If the paint film integrity of the applicable surface cannot be maintained, the paint shall be completely removed or the surface recovered with a suitable material such as gypsum wallboard, plywood, or plaster before any repainting is undertaken.

(3) When appraising or making compliance inspections of properties to be financed with VA-guaranteed home loans, VA fee personnel will apply the provisions of subparagraphs (1) and (2) above, and will recommend correction of defective paint conditions. The reviewing staff technician will ascertain defective painted surfaces to be repaired, and will issue the CRV describing these areas. The CRV will require reinspection by VA fee or staff personnel after the repair is completed.

13.12 APPLICATION OF VA MINIMUM PROPERTY REQUIREMENTS BY VA REGIONAL OFFICES

a. In all cases involving proposed residential construction, an examination of the required plans, specifications, and exhibits is made by a qualified staff or fee technician for completeness. The examination includes a determination of adherence to the land planning requirements applicable to the project or development. If the examination discloses incomplete or omitted items on the plans and specifications, corrections are made, dated, and initialed on all copies of the plans and specifications. If it is impractical to proceed with the appraisal because of the extent of corrections necessary, the plans and specifications are returned to the builder or sponsor for revision. Upon approval of plans and specifications, the floor plan for each plan type and/or set of plans and each set of specifications is endorsed as follows, whether inspection is by VA or HUD:

"DEPARTMENT OF VETERANS AFFAIRS

All construction shall equal or exceed that shown or described in these plans and specifications and the applicable provisions of the VA minimum property requirements. If the drawings as corrected are found to be in conflict with the VA minimum property requirements, the latter shall govern. Any changes or corrections noted will be considered as binding only if initialed and dated by an authorized official of VA. If the builder contemplates any deviations from these plans and specifications, approval must be obtained in advance from the VA regional office; otherwise, the builder proceeds at his or her own risk.

Date---------- Signed by _____

If the builder or veteran refuses to accept the provisions of the above endorsement, VA will decline to issue a CRV.

b. In proposed construction cases, VA requires certifications from architects, surveyors, land planners or professional engineers, or other technically qualified individuals approved by VA for such purposes, that the drawings or plans and specifications are in conformity with applicable VA MPR's. The certification will read substantially as follows:

"I hereby certify that this drawing or plan and related specifications meet all local code requirements and are in substantial conformity with VA minimum property requirements [including the energy conservation standards of the 1992 Council of American Building Officials (CABO) Model Energy Code (MEC)]."

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CHAPTER 14. COMPLIANCE INSPECTIONS

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14.01 POLICY

VA designates independent fee personnel to perform compliance inspections. Individuals who have been designated as appraisers can also be designated as compliance inspectors if qualified by experience and training. When designated fee inspectors are not immediately available, compliance inspections can be made by VA salaried personnel.

14.02 PURPOSE OF COMPLIANCE INSPECTIONS

Inspection of dwellings under construction and, in appropriate cases, existing dwellings being altered, improved, or repaired is provided by VA to determine whether onsite and offsite improvements are in accordance with VA-approved plans and specifications and VA MPR's (minimum property requirements), as locally modified. When inspections are made by VA-designated compliance inspectors, the lender need not provide the certification of completion. Properties not meeting VA MPR's are not acceptable. Deviations from plans and specifications may require a revised reasonable value.

14.03 CONSTRUCTION REQUIRING INSPECTION

VA compliance inspections are required in all cases involving proposed residential construction, or major alterations, improvements, or repairs for which a prior determination of reasonable value is being sought. VA compliance inspections are mandatory except when construction is under HUD (Department of Housing and Urban Development) supervision. When only minor alterations, improvements, or repairs are involved, the regional office may determine that the nature of the work is such that a certification by the lender will be acceptable as evidence of satisfactory completion.

14.04 ASSIGNMENT OF INSPECTORS

a. Compliance inspectors are assigned to projects or individual properties as soon as practicable after issuance of the CRV (VA Form 26-1843, Certificate of Reasonable Value) or MCRV (VA Form 26-1843a, Master Certificate of Reasonable Value). The lender and fee inspector are notified of the assignment, and the inspector is provided with a set of plans and specifications and pertinent instructions. Any number of inspectors may be assigned to multiunit projects, depending upon the nature of the project and the inspectors capacity to handle the workload.

b. Compliance inspection assignments are made only to those fee inspectors whose past performance warrants their retention on the current roster of designated fee inspectors, and who have been designated to inspect for VA in the territory in which the property is situated.

c. During construction, all requests for inspection will be initiated by the builder and directed to the lender or inspector, according to VA regional office procedures. When scheduling inspections, compliance inspectors are directed to accommodate the builder insofar as possible.

d. Regional offices may deviate from instructions in subparagraph a above when the builder or sponsor requests immediate appointment of a compliance inspector, subject to the following:

(1) VA has received the certification required by paragraph 13.12b that the plans and specifications comply with local codes and VA MPR's [including the energy conservation standards of the 1992 Council of American Building Officials (CABO) Model Energy Code (MEC)].

(2) The builder or sponsor must submit written evidence acknowledging the special nature of the procedure.

(3) The first and second stage compliance inspections, VA Form 26-1839, Compliance Inspection Report, will not be processed by VA until the appraisal report has been received and reviewed, and the reasonable value established.

14.05 REQUIRED INSPECTIONS

a. Properties not enrolled in an insured 10-year protection plan require first-, second-, and third-stage inspections. In most cases, only a third-stage inspection is required for a property enrolled in an insured 10-year protection plan. Special inspections may be required when the regional office considers them necessary to protect the interests of VA and the veteran-purchaser. One or more special inspections will be required for alterations, improvements, or repairs to existing construction. If the construction work observed at the firstor second-stage inspection is unsatisfactory, reinspection is necessary. Reinspection is also required for incomplete third-stage inspections, but the regional office may waive this reinspection for minor work if the lender will certify completion.

b. Occasionally, through oversight, the builder or other responsible party may fail to request the required inspection(s). In such cases, a waiver may be requested by either party. If the veteran is under contract, he/she must also submit a written request for the waiver of the required inspection(s). Waivers are processed by regional offices. Requests for waiver must be accompanied by evidence that the local building official has inspected the building improvements at any inspection stage which was not completed by the designated compliance inspector. For construction in communities which do not have local building inspections at prescribed construction stages, regional offices may obtain a statement from the designated compliance inspector that the builder's quality of workmanship and conformity with approved exhibits is acceptable.

14.06 COMPLIANCE INSPECTION STAGES

a. First-, second-, and third-stage inspections are described in item 1 of VA Form 26-1839. Alternative stages are listed opposite the first inspection stage. The first of these, "Excavation complete and ready for footings and foundations," will usually be scheduled in localities where it is advisable to have the bearing soil examined before construction proceeds. The second, "Foundation walls complete and ready for backfill," will usually be scheduled where soils are generally uniform and free from conditions likely to cause foundation difficulties. Selection of the first inspection stage to be used in specified areas will be made by the regional office and inspectors will be notified of such selection.

b. The items to be observed at each inspection are as follows:

(1) First Compliance Inspection

(a) Completion of Excavation. During this inspection, the nature of the bearing soil will be examined, as well as the location of the structures on the plot, depth of excavation relative to the street and proposed finish grades and to the grades of adjoining improved properties; also as to the form work for footings or the condition and quality of the footing trench if forms are not required.

(b) Completion of Foundations. If this is the initial inspection, all items described above are observed and reported on. In addition, compliance is ascertained concerning the size, location, and condition of all footings, foundation walls, piers, and other supporting members; also, quality of materials and workmanship of masonry, damp proofing, and foundation drainage.

(2) Second Compliance Inspection. Examination is made of the following:

(a) All construction below the superstructure not installed or which was installed but not inspected or reported upon at the first inspection stage, including footings, foundations, piers, columns, waterproofing, and drainage provisions.

(b) Construction of the superstructure, including quality of materials and workmanship, details of construction, and the suitability of arrangement of all items for subsequent installation of equipment and of interior and exterior finishing materials.

(c) Plan of the dwelling, including the arrangement of Partitions and sizes and placement of all openings.

(d) Roughing-in of mechanical work, including plumbing, heating, and electric installations with respect to (1) providing for correct installation of fixtures, equipment, and accessories, (2) avoiding impairment of the strength of structural members, and (3) proper operation of the completed systems.

(3) Third Compliance Inspection. Examination of property is made to ascertain acceptable completion of all specified improvements, both offsite and onsite. Among the items inspected and reported upon are:

(a) Exterior. Compaction of fill material, finish grading, drainage, utility connections, walks, drives, accessory buildings, retaining walls, planting; design of dwelling structure, materials, details of their installation and finish; protection against the elements and penetration of moisture, masonry pointing, caulking at openings, paint coverage, flashings; safety provisions at terraces, porches, and areaways. Offsite improvements including utilities, storm sewer system, drainage channels; grading, curbs, gutters; paving, pavement edging, subgrade, base and wearing surface, and erosion control.

(b) Interior. Design, materials, and equipment, and details of their installation; interior surfaces and their finish treatment; cabinets and millwork; details of plumbing, heating, ventilating, and electric systems, equipment and fixtures, and their operation; quality and operation of hardware; quality of tilework, glass, venting of attics and under floor spaces.

c. In cases involving alterations, improvements, or repair work, the stages at which special inspections are to be made will be determined by the VA regional office according to the nature of the proposed work.

14.07 PREPARATION AND SUBMISSION OF REPORT

a. Compliance inspection reports are prepared on VA Form 26-1839. The inspector will submit a report for each inspection.

b. Evidence that the individual water supply system and/or sewerage-disposal system is satisfactory to health authorities of jurisdiction is obtained by the inspector from the builder or other source and transmitted to the regional office together with VA Form 26-1839. In all cases, VA compliance inspectors must report accurately and fully all variances from VA MPR's and approved plans and specifications.

c. The final VA Form 26-1839 must describe the condition, suitability, and readiness of all equipment, fixtures, and observable construction. Such shortcomings as scratches in painted surfaces, poorly fitted doors, stuck windows, cracks in walls, etc., must be reported even if arrangements have been made

for correction. Inferior workmanship, defective materials or equipment, or faulty installation or application of materials or equipment and/or deviation from approved plans and specifications must be reported fully on VA Form 26-1839.

d. The final compliance inspection report must clearly identify any variation or optional item of equipment included in the construction.

14.08 REVIEW AND APPROVAL OF REPORT

a. All inspection reports (VA Forms 26-1839) are subject to review and modification by the VA regional office. When items of noncompliance are reported, comparison will be made to the related plans and specifications and the applicable VA MPR's and whether "Substitutions or Deviations" as reported by the inspector are acceptable to VA. Compliance inspectors may be authorized to approve and distribute first and intermediate compliance inspection reports that show compliance, or no substitutions or deviations. Compliance inspectors may also be authorized to approve and distribute final or third-stage inspection reports that show compliance, or no substitutions, or deviations, or that report only items that can be covered by a lender's certification or an escrow.

b. Experience has shown that it is not always in the best interest of VA, the purchaser, or other program participants to require that all carpet and other finish floor coverings be installed prior to the third-stage compliance inspection of proposed construction. Instead, the following procedure may be used (at the discretion of the VA regional office):

(1) With the exception of wood-finish flooring and floor covering in bathrooms, installation of finish floor covering may be delayed until just prior to loan closing, providing VA issues a third-stage compliance inspection report which includes the following:

(a) In item 1 of VA Form 26-1839, the compliance inspector has checked "B" as the condition of construction, and has described all finish floor covering to be installed (e.g., carpet manufacturer's name and carpet quality code number) and the area(s) in which it is to be installed. Carpet cushioning need only be described as "carpet cushioning stamped with a reference to UM 72."

(b) In item 6 of VA Form 26-1839, VA has:

1. Checked item A, Prefinal Report Approved, and item C, Certificate of Reasonable Value Revised, and

2. Checked item D or entered the statement "Certification is required that lender's inspection prior to loan closing reveals satisfactory installation of specified finish floor covering as described in item 1 in the area(s) identified in item I;" and

3. Signed and dated the form.

(2) An escrow of funds for the installation is not required, nor is VA Form 26-1844/HUD Form 92577, Request for Acceptance of Changes in Approved Drawings and Specifications, or a revised CRV. No change is made in the requirements that all finish floor covering, including carpet cushioning, be identified in the specifications, and that all wood-finish flooring and bathroom floor covering be fully installed at the time of the third-stage compliance inspection. Mortgagees will need the cooperation of builders to satisfy themselves that the floor covering is the same as described in item I of VA Form 26-1839. An imprint on the back of the carpet will show the manufacturer's name and quality code number, and approved carpet cushioning will be stamped with a reference to HUD Use of Materials Bulletin No. 72. Before the loan is closed, all requirements of the CRV must be met and any deviations and/or noncompliance items listed on the third-stage compliance inspection report must be resolved in accordance with VA requirements.

14.09 SUBSTITUTIONS OR DEVIATIONS

a. VA Form 26-1844 will be used by builders, sellers and others for requests to accept changes in drawings and specifications. Any violation of the "Conditions of Acceptance," printed on the reverse of the form, may nullify VA's acceptance of the changes.

b. An exception to the use of VA Form 26-1844 may be made when no veteran-purchaser is involved and the change is limited to substitution of mechanical equipment of equal value. Fee compliance inspectors will check VA Form 26-1839, item 1B, "Substitutions or Deviations," and describe the equipment change and its value. The VA staff technician's signature is acceptance of the change and should be noted on the plans and specifications.

c. Another exception to subparagraph a above may be granted for HUD-inspected properties provided the additions, substitutions or variations are described on HUD Form 92051, Compliance Inspection Report, and the veteran has signed his or her acceptance of the changes from the plans and/or specifications. This procedure applies only to items of a minor nature when no additional cost to the veteran is involved and no change in reasonable value is indicated. Typical examples are substitution of water heater, furnace, hardware, bath fixtures and/or relocation of electrical outlets. When additional cost to the veteran is involved, VA Form 26-1844 will be used to change the value.

14.10 DISPOSITION

a. Compliance Inspection Reports Other Than Final Compliance Inspection Reports. An unapproved copy of each such report will be left at the job site for the builder. One copy will be retained by the inspector for his or her case file. The remaining two copies will be forwarded to the regional office. If the compliance inspection report is approved as submitted, one copy will be forwarded to the lender. If a revised report is prepared by the regional office, copies will be distributed to the lender, the compliance inspector, and the builder. In these cases, the original report submitted by the compliance inspector will be marked "Superseded," one copy will be retained by VA, and the other copy forwarded to the lender. If, in accordance with paragraph 14.08a, the fee compliance inspector is authorized to approve and distribute first- and intermediate-stage compliance inspection reports, he or she will provide the builder with two copies, one of which the builder will forward to the lender; one copy will be forwarded to VA by the inspector; and one copy will be retained by the inspector for his or her files.

b. Final Compliance Inspection Reports. An unapproved copy of each such report will be left at the job site for the builder. The compliance inspector will retain one copy for his or her case file., The original and two copies will be forwarded to the VA regional office. Upon approval by VA, the original and one copy of VA Form 26-1839 will be forwarded to the lender. If a revised report is prepared by the regional office, the copies will be distributed as described in subparagraph a above for the same situation, except that an extra copy will be sent to the lender. The lender will retain the original VA Form 26-1839 until it is returned with VA Form 26-1820, Report and Certification of Loan Disbursement.

14.11 CONSTRUCTION UNDER HUD SUPERVISION

a. VA compliance inspections are not generally required for construction under HUD supervision. Evidence of the builder's compliance with plans and specifications and approved change orders on HUD Form 92051 must be submitted to VA no later than submission of the loan report and certification of loan disbursement. As a substitute for HUD Form 92051, a photostatic copy or certified duplicate of the lender's copy is acceptable, as is a letter from the HUD office of jurisdiction stating that the property has been completed in accordance with plans and specifications. If the final HUD compliance inspection report stipulates that incomplete work, such as street improvements, are to be completed in accordance with requirements specified on another commitment or in a letter to the sponsor-builder, the lender will furnish the regional office with a copy of either (1) the other commitment, (2) the HUD letter to the sponsor-builder setting forth the subdivision conditions, or (3) a lender's certified copy of the mortgage insurance requirements as set forth in the other commitment.

b. In addition to the certification required on VA Form 26-1805, VA Request for Determination of Reasonable Value, the person or firm making the request for appraisal must submit a certification that VA has been supplied with identical copies of the plans and specifications and other related exhibits upon which HUD based its approval, including HUD change orders, if any. This certification must be received by VA no later than the loan report and certification of loan disbursement. (HUD Form 92051 marked "repair inspection" is not acceptable as evidence of satisfactory completion of construction under HUD compliance inspection procedure for proposed construction.)

c. HUD compliance inspection reports that show "C Compliance" with a notation of incomplete onsite or offsite work, cannot be accepted as evidence of satisfactory completion unless an escrow agreement has been established in accordance with VA procedures. These agreements require VA approval prior to release of escrowed funds. Before approval, VA must be assured of completion of the deferred work by a VA re inspection or a HUD compliance inspection report showing satisfactory completion, or other acceptable evidence. Cost of re inspection must be borne by the builder or sponsor and is not chargeable to the veteran-purchaser.

d. Acceptance of HUD Form 92051 as evidence of satisfactory completion is predicated on the assumption that HUD interpretation and application of the HUD Minimum Property Standards is consistent with VA's. HUD Form 92051 evidencing acceptable completion does not necessarily assure compliance with VA MPR's. Regional Office Directors are authorized to add a VA inspection to the three HUD inspections when necessary to assure conformity with VA regulations. VA's inspection may be made at whatever stage the Director determines is appropriate to the application of minimum standards for planning, construction and general acceptability.

14.12 SUBSTITUTION OF HUD FINAL INSPECTION REPORT FOR VA COMPLIANCE INSPECTIONS

When builders use the HUD inspection service, HUD final inspection reports are required for all improvements other than those for which escrows have been established under VA procedure. This does not affect the requirements for final VA inspections in addition to HUD final inspections.

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CHAPTER 15. CONSTRUCTION & VALUATION MISCELLANEOUS TOPICS

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15.01 EQUAL EMPLOYMENT OPPORTUNITY - FEDERALLY ASSISTED CONSTRUCTION CONTRACTS

a. No action is taken on an MCRV (VA Form 26-1843a, Master Certificate of Reasonable Value), or a CRV (VA Form 26-1843, Certificate of Reasonable Value) on individual proposed construction, or modifications, unless the applicant has executed VA Form 26-421, Equal Employment Opportunity Certification. When an applicant requests service from more than one VA regional office, an executed VA Form 26-421 must be on file with each. VA regional offices will investigate all written complaints of alleged discrimination in employment or violations of VA Form 26-421.

b. Each contractor and subcontractor will prominently display VA Poster 26-83-1, Equal Employment Opportunity, signifying that the contractor is an equal opportunity employer, at job sites covered by VA CRV's. VA will furnish additional posters for adequate coverage. In areas with concentrations of Spanish-speaking people, VA Poster 26-83-1(S) in Spanish, will be displayed next to the English VA poster.

c. At the initial inspection, compliance inspectors will observe whether the required poster is in place. Failure of the builder to prominently display the poster will be noted as noncompliance on the inspection report, and the regional office will immediately inform the builder that no further inspections will be made until the poster is displayed.

15.02 APPRAISAL AND COMPLIANCE INSPECTION FEES

a. Policy. VA has a responsibility to protect the veteran against excessive charges for appraisal services. Each regional office has the responsibility of limiting fees to a maximum which is fair and does not exceed those customary for similar services in the community. It is VA policy not to encourage increases in fees or agree to increases except when there is adequate justification. Changes in appraisal fees must have the prior approval of Central Office. Compliance inspection fees set at or below the maximum in paragraph 17.07d do not need prior approval of VA Central Office. In establishing the fee schedule, the VA regional office consults with HUD (Department of Housing and Urban Development) office(s) serving the regional office area. HUD offices have generally adopted the same fee schedules as VA.

b. Individual Appraisals. The amount of the appraisal fee for an individual unit not covered by a committee appraisal is based on the following factors:

(1) Prevailing local appraisal fees for comparable services;

(2) Number of individual appraisal assignments made at the time in the same relative neighborhood or area;

(3) Traveling time and distance to property; and

(4) Type of property to which the assignment relates and the difficulties and complexities involved.

c. Committee Appraisals. A schedule of committee fees for project appraisals will be established on the basis of the following variables. The fees shall be paid by builders or lenders in advance or by deposit in an escrow mutually satisfactory to the parties concerned.

(1) Proposed Construction

(a) Number of structural units to be erected.

(b) Prevailing local VA appraisal fees.

(c) Number of basic types of plans.

(d) Number of appraisal committee members.

(e) Number of optional items.

Example

Fee Per Plan Type	x	Number of Plan Types	x	Number of Committee Member	+

Fee Per Lot	x	Number of Lots	+	Fee Per Option	x	Number of Options	= Total Fee

(2) Existing Construction. The instructions in this paragraph are also applicable to existing properties appraised by a committee of designated appraisers. An individual appraisal report is required for each property appraised.

d. Compliance Inspections. Fees for compliance inspections are paid by the builder, sponsor, or lender. The fees for all regular compliance inspections can be charged to the veteran-purchaser of an individual property as part of the closing costs. The fees for noncompliance re inspection are borne by the builder and are not chargeable to the veteran-purchaser. Expenses claimed by an inspector who unsuccessfully attempts to complete a scheduled inspection are not chargeable to the veteran-purchaser. This can result from failure of the builder to have the work ready for inspection, failure of the inspector to arrive at the job at an appointed time, or failure of the builder or sponsor to provide access to the property. Such expenses are borne by the sponsor, builder, inspector, lender, or whomever is found chargeable by agreement between parties.

15.03 EMPLOYMENT OF TECHNICAL FEE PERSONNEL

It is within the authority of the regional office to engage engineers, architects, or other technicians as needed on a contractual fee basis. When these services are attributable to acts or failures by the builder or sponsor such as inadequate engineering data, the cost is paid by the builder or sponsor. If costs are allocable to both builders or sponsors and VA, the decision is made by the regional office on the basis of the facts.

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CHAPTER 16. PROCESSING PLANNED-UNIT DEVELOPMENTS (OTHER THAN CONDOMINIUMS)

CHAPTER 16. PROCESSING PLANNED-UNIT DEVELOPMENTS (OTHER THAN CONDOMINIUMS)

16.01 PURPOSE

Policies and procedures described in this chapter apply to planned-unit developments other than condominiums. Condominiums are discussed in chapter 17.

16.02 DEFINITIONS

a. PUD (Planned-Unit Development). A subdivision of land into lots for use predominantly for owner-occupied homes which contain common land comprising an essential or major element of the development (e.g., usable open space, pool, community building, tennis courts, other recreational facilities), owned by a home association (usually incorporated) to which all homeowners must belong and to which they must pay lien-supported assessments. A PUD is designed and organized for use and operation as a separate entity; or as expanded by annexation of additional land area; or a group of contiguous subdivisions, either operating as separate entities or merged into a single consolidated entity.

b. HOA (Homeowners Association). A nonprofit organization operating under recorded land covenants where (1) each lot owner in a planned-unit development is automatically a member,, and (2) each lot is automatically subject to a lien-supported charge for a proportionate share of the expenses for organization activities, such as maintenance of common areas.

c. Common Area. A parcel or parcels of land, together with the improvements thereon, with use shared by owners and occupants of the individual building sites in the PUD.

16.03 REQUIREMENTS FOR SPECIAL PROCESSING CONSIDERATION

a. The requester must apply for VA acceptance of the overall project by submitting applicable documents shown in item 1 of paragraph 16.15.

b. Before a project may qualify as a PUD, documents must meet the requirements shown below, except as noted. The use of VA Form 26-8200, Suggested Legal Documents for Planned-Unit Developments, is not mandatory but is encouraged, as it contains all of VA requirements and expedites document review. Draftsmen who prefer to use different formats and language should use documents that comply with requirements of this handbook. For reference, many of the requirements are followed by a citation to the comparable provision in the VA-suggested legal documents. Deviations from the suggested documents may delay the review, but delay could be minimized by identification of the deviation and an explanation for its use.

c. In very large projects, it may be necessary for the developer to create an association for the larger area (referred to as an "umbrella" PUD) along with several smaller associations for the various clusters or villages which make up the entire project. The large association provides facilities and services on a broad scale to serve the larger community area. Many of the provisions in the documentation for the umbrella PUD will be in general terms and will lack some of the provisions contained in VA-suggested documents. In this type development, the initial submission generally will not include documentation for the sub associations. Each association level is reviewed and approved separately by VA as submitted. VA regional offices confirm that homeowners are automatically members of each association with representation in each.

d. In staged or phased developments, the initial stage is generally subject to the covenants with provisions for annexation of future stages as construction and sales progress. In these instances, the developer must submit to VA a general plan of the entire proposed development with submission of the first stage. The general plan should contain:

(1) A general indication of size and location of additional developments in subsequent stages and proposed land uses in each;

(2) The approximate size and location of common properties proposed for each stage;

(3) The general nature of proposed common facilities and improvements; and

(4) A statement that the proposed additions, if made, will become subject to assessment for their share of association expenses. The proposed overall general plan must be reviewed and approved prior to approval of the initial development stage (par. 16.05c and VA Form 26-8200, par. 7).

16.04 TITLE

The veteran must receive an estate in realty that meets the requirements of 38 CFR 36.4350. The veteran's estate may not be subject to unreasonable restraints upon alienation which would adversely affect title or marketability of the unit. Restrictions on normal use and occupancy of property inherent in fee ownership are not acceptable. The following restrictions against an individual unit owner's right to alienate or use and enjoy his or her unit are not acceptable to VA:

a. Right of first refusal unless such right is in conformity to 38 CFR 36.4350(b)(5); and

b. Leasing restrictions which amount to unreasonable restrictions on use and occupancy of a unit.

(1) Right of first refusal applicable to leasing a unit.

(2) Right of prior approval of either a prospective purchaser or tenant.

(3) Prohibition against leasing of a unit for a period in excess of 1 year.

16.05 THE PROPERTIES

a. The covenants must contain an adequate legal description of the property, including the common area and the lots, and appropriate language subjecting that property to the covenants (introductory paragraph of VA Form 26-8201, Declaration of Covenants, Conditions and Restrictions). VA prefers that the description of the property be written into the body of the covenants rather than by reference to an attached exhibit. Any exhibit, schedule, or plat referenced or attached as an exhibit must be recorded with the declaration unless it is already on record. If the development plan contemplates annexation of additional land area, it is not necessary or recommended that more than the first stage be initially subjected to the covenants.

b. Annexation of additional properties must have the consent of two-thirds of the lot owners (excluding the developer) except when annexed pursuant to a staged development plan in accordance with subparagraph c below.

c. In a staged development, the developer may annex additional land without the consent of a lot owner only if the annexation is: (1) limited to a stated, reasonable time; (2) limited to a defined area; (3) in accordance with a general plan filed with VA; and (4) approved by VA (VA Form 26-8200, Appendix Form No. 5).

d. The first stage of a staged development must be a self-contained unit capable of independent existence in the event the plan does not progress beyond that point. After each stage is annexed, the development, as enlarged, must be capable of existence without dependence on any proposed additional stages. A dilemma is created when a developer seeks to convey the entire development's recreational amenities to an HOA in the first stage, with support anticipated to be spread over future stages. If development goes no further, the HOA could not survive without a severe economic burden on the early homeowners. The individual characteristics of each PUD determine the developer's solution.

(1) One recommendation might be for the developer to phase sections of the recreational area, sized commensurate with the number of lots bound to its support.

(2) Another possible solution might be for the developer to place the amenities in a later stage and forego credit in the CRV (VA Form 26-1843, Certificate of Reasonable Value) until such time as there is sufficient HOA membership to support the amenity package. VA regional offices must assure that builders/developers do not advertise facilities included in future stages in the current offering. VA will examine the budget to determine that the homeowner assessment will not be used to support facilities that have not been completed and conveyed to the HOA. If, after VA approval of the general plan, but before completion and sale of those homes equaling the minimum number required to support the amenities, the builder wishes to convey the amenities to the HOA, VA approval must be secured.

(3) A third possible solution might be for VA to establish a pre-sale requirement upon the whole project, based on local market conditions. The regional office must be satisfied that the HOA will have a sufficient number of members to insure proper maintenance and operation of the facilities without developer assistance.

(4) A number of other alternatives may be acceptable if results are feasible.

e. If onsite vehicular parking space is not provided on each lot, provision for offsite parking space must be included. The homeowner should be assured of sufficient permanent exclusive parking space in the common area and that other owners may not claim a right to its use by virtue of their general easement (VA Form 26-8200, Appendix Form No. 3b).

f. It is recommended, particularly in townhouse developments, that the HOA provide exterior maintenance of residences (VA Form 26-8200, Appendix Form No. 2a). If there are exterior features which the HOA would not maintain, such as patios or carports, those features may be itemized. In PUDs where exterior maintenance is not a normal function of the HOA, a provision where the HOA performs maintenance if a homeowner fails to keep his or her residence in a satisfactory manner (VA Form 26-8200, Appendix Form No. 2b) is recommended.

g. In no event should the HOA provide interior maintenance of structures it does not own.

h. Common utility lines in planned-unit developments must not pass over, under, or through any of the units, and none of the connecting lines can run under any unit other than the one it services.

i. Customary use restrictions and easements for public utilities may be included in the covenants. A new article should be employed for this purpose.

16.06 THE COMMON AREA

a. For a development to be considered a PUD, it is necessary that common areas be owned by the HOA and consist of one or more elements other than open flood plain, street lighting, or unusable open space which will not enhance the values of properties in the development. The VA office having jurisdiction makes this determination.

(1) If the use of the common areas has been dedicated to the public, or common areas are privately owned by other than the HOA or the individual owners in common, the planned-unit development will be processed by VA as a standard subdivision.

(2) If a subdivision is subject to a lien-supported assessment and mandatory membership in an HOA or participation as a beneficiary under a trust arrangement, it becomes necessary for VA to determine if there are more than nominal common amenities. If the amenities are nominal only, PUD processing criteria are not applicable. Normally, before a determination can be made that more than nominal amenities exist, other than governmental-type services should be provided. There should also be more than commonly owned minor open green spaces or roadway median or boundary strips. Active recreational facilities would usually lead to a finding that the subdivision is a PUD, provided there are also lien-supported assessments and mandatory HOA membership.

(3) If it is determined that a subdivision is a PUD, a review of all required exhibits by VA will be necessary. However, in existing subdivisions, with no developer involvement, the review is primarily concerned with items that might violate 38 U.S.C. chapter 37, or VA regulations. In addition, VA must determine that there is nothing inoperative under State law. The sufficiency of the budget is considered in establishing value and the amount of the monthly assessment is considered in credit underwriting.

(4) If the VA regional office determines that a subdivision subject to lien-supported assessments is not a PUD, a full legal review of the documents is not required. However, the lender will be advised by appropriate, prominent endorsement to the CRV that there is a lien-supported assessment and that it is the lender's responsibility to assure that the assessment is subordinate to the VA guaranteed mortgage. If the assessment would be superior to the proposed guaranteed mortgage, the lender should seek additional advice from the regional office prior to closing the loan.

(5) Title 38, U.S.C., section 1803(d)(3), requires that a VA guaranteed loan be secured by a first lien on realty. In applying this section, it is important to note that any covenant that establishes a lien superior to the guaranteed mortgage recorded after the effective date of this section (June 6, 1969), the

Secretary's approval, if appropriate, must have been secured prior to the recording of the covenants in question. Failure to secure the approval of the Secretary prior to recording may preclude the acceptance of any subdivision when the assessment lien primes the VA mortgage.

(6) When the covenants were recorded prior to June 6, 1969, and provide an assessment superior to the VA mortgage for governmental-type services, the matter should be submitted by the VA regional office to VA Central Office with an explanation of services, amenities if any, and the regional office's recommendation concerning approval.

b. The covenants must contain a provision granting each lot owner a non-exclusive easement for the use and enjoyment of the common area (except limited or restricted use areas accorded specific units), subject only to temporary suspension from use of recreational facilities for either the nonpayment of assessments or the failure to comply with reasonable HOA regulations governing the use of the common area (VA Form 26-8201, art. II, sec. 1(b)). The right to use the common area must be an easement appurtenant to the residential lots rather than a license held by virtue of association membership.

c. The common area, including all recreation facilities scheduled for the subject stage to be considered in value, must be fully completed and conveyed to the HOA free and clear of all liens and encumbrances prior to the first VA loan guaranty or direct loan in the project. Although VA policy requires a clear title to common areas in the HOA, there may be an occasional extraordinary submission containing a proposal to convey a portion or all of the common area to the HOA subject to existing liens. A developer may also propose to convey the property to the HOA for more than a nominal consideration. In either case the documents) containing such provisions should be submitted to VA Central Office by the regional office along with an explanation and recommendations. Major common facilities to be completed in a later stage may not be reflected in the current CRV valuation. Title into the HOA must be confirmed by title policy or other locally acceptable evidence. Review of title evidence will be done by VA District Counsel. Appropriate controls will be maintained and revised documents, if required, must insure compliance. Exceptions that would allow a postponement of completion of common area within subject stage are not generally permitted. A VA regional office may not routinely permit postponement of improvements that have a significant influence upon value and for which the homeowner is paying in the sales price. Permission to postpone completion of common areas and facilities within a stage under consideration will be limited to those instances when completion is delayed due to circumstances beyond the control of the builder, such as adverse weather conditions and then only for the period of time deemed necessary

for completion. Postponement for the convenience of the builder is unacceptable. If a cash escrow is accepted, care is taken to see that timely periodic inspections are made by the Department making the compliance inspections (VA or HUD (Department of Housing and Urban Development)) to assure adequate progress toward completion. Extensions of escrow agreements generally will not be granted except for the most cogent reasons. The same principles apply to proposals by builders to submit a letter of credit in lieu of a cash escrow to assure completion of postponed improvements. Acceptable letters of credit must be irrevocable and a valid and binding obligation of the issuing bank. They must be for a term extending at least 90 days beyond the final date for completion of the improvements specified in the escrow agreements. It should be understood that if the builder fails to perform and the issuer of the letter of credit is called upon to pay, the holder of the letter of credit must make demand prior to expiration of the term of the letter of credit. The issuer has no liability after that date. Approval by VA/HUD of any request for an extension of the time for performance specified in the escrow agreement will be conditioned upon receipt of written assurance that the supporting letter of credit is likewise extended for a term ending not less than 90 days after the new date for performance by the builder. The holder of a letter of credit, and the party with the fiduciary responsibility to call upon its terms, must be a HUD-approved mortgagee with no identity of interest with the builder in whose behalf the letter of credit is issued in cases in which the builder is seeking dual financing. If HUD financing is not involved, a supervised lender, which is not a HUD-approved mortgagee, may be accepted, provided it has no identity of interest with the builder. Since VA and HUD both are ordinarily involved in the same PUDs, the two Departments will coordinate about permitting postponement of completion of the improvements located in the common area of a PUD and as to the acceptability of the type of assurance of completion the builder proposes to furnish. Initial maintenance assessments of the homes association will not be reduced because of postponement of completion of improvements to the common area but rather will be computed and levied as though all improvements have been completed prior to conveyance of the first lot. Any surplus funds generated can be used to create or increase the HOA-s reserve for contingencies, and any adjustment in amount of future assessments deemed warranted, subsequent to completion of the improvements and takeover of control of the HOA by the property owners, may be made at a future date. The basis for this position is twofold.

(1) A builder should not be permitted to enjoy a competitive advantage in advertising a lower assessment by reason of postponement of improvements for which it is responsible; and

(2) VA deems it important that buyers become accustomed to paying the full amount of the assessment necessary to maintain the fully completed common area from the beginning of their ownership rather than a low assessment for the first year or so and then face the necessity for a sharply increased payment.

d. Any provision for action by the association which could affect the lot owners, easement in the common area (i.e., mortgage, conveyance, or dedication of the common areas; or annexation, merger, consolidation, or dissolution of the association) must have the assent of not less than two-thirds of each class of members. (See VA Form 26-8201, art. II, sec. 1(c); art. VI, sec. 4; and VA Form 26-8202, Articles of Incorporation, art. IV, subsecs. (d), (e), and (f); and art. VIII.) (See par. 16.11.)

e. If ingress and egress to any residence are through the common area, conveyance or encumbrance must be subject to the lot owners' easement.

f. The developer may not reserve to itself the right to mortgage or otherwise encumber the common area.

g. Absolute liability for acts of family, guests, invitees, or licensees should not be imposed in the covenants, bylaws, or otherwise upon individual owners for damage to the common area or lots (including improvements) of others. Liability should be only that for which homeowners would be legally responsible under State law. Note that under the exterior maintenance clause in VA Form 26-8200, Appendix Form No. 2a, if the damage is to one's own property through the willful or negligent acts of the family, guests, or invitees of the owner, the cost of such repair shall be added to the assessment for that lot.

h. Upon dissolution of the HOA, its assets must be conveyed to another HOA or to an appropriate public agency having similar purposes (VA Form 26-8202, art. VIII).

i. When local law does not govern tax assessment procedures, the taxes on the common areas should be assessable against the common areas only and the HOA should be solely responsible for the payment of such taxes, unless the tax base of the individual unit reflects its interest in the common areas without the need for assessment against the HOA.

16.07 HOA ASSESSMENTS

a. The covenants must provide for an annual assessment which is: (1) lien supported; (2) applicable to all lots (except as may be exempt under subpar. g below); (3) in force before the first VA guaranty or direct loan; (4) adequate to both maintain common areas and replacement reserves, if required; and (5) uniform (VA Form 26-8201, art. IV, secs. 3, 6, and 7). If there are different types of property within a project, each with a different benefit to be derived from the association, the assessment for each type may be different, but within each type the assessment must be uniform. As an example, one PUD may have an area of single family detached homes and an area of townhouses. If only townhouses are to have exterior maintenance by the HOA the townhouse assessment

may be greater. As another example, some areas may have private streets or parking areas while others do not. Nevertheless, units within a similar grouping must be assessed the same.

b. The lien of any assessment levied by the HOA must be subordinate to the lien of a first mortgage (VA Form 26-8201, art. IV, sec. 9). Generally, the assessment should not be subordinate to any but the first mortgage. This provides greater assurance of assessment collectibility and increases the HOA's chances of remaining viable. Any attempt to condition the subordination to first liens by certain classes of lending institutions or specific lenders is generally objectionable since it may have the effect of prohibiting financing the sale of acquired properties by VA.

c. The annual assessment must be fixed at a given maximum rate to enable purchasers to determine their financial obligation, and for VA to determine whether the amount is reasonable and adequate from a project standpoint, and acceptable from an individuals credit underwriting standpoint. Large PUDs have been allowed to tie assessments to local tax valuation rates, although this is not preferred and must be examined on a case basis. It is not acceptable, however, in proposed or developer controlled PUDs for the covenants to simply provide that the homeowner's assessment will be a proportionate share of the HOA annual expenses. Obviously prospective purchasers and VA do not know what this will be and have no way to protect against developer's control of the budget. For projects in which the developer is out of control and there is a project "track record" for assessments, determinable from past budgets, this requirement may be waived by the VA regional office.

d. The annual maximum assessment may not be increased without the assent of at least two-thirds of each class of members at a meeting called for that purpose with at least 60 percent of the lot owners or their proxies present after adequate notice. If 60 percent do not attend, a second meeting may be called with the same notice and the quorum may be reduced to 30 percent (VA Form 26-8201, art. IV, secs. 3(b) and 5). The board of directors may be permitted to increase the maximum annual assessment without a vote of the members, but such an adjustment should not exceed 5 percent of the previous year's maximum assessment (VA Form 26-8201, art. IV, sec. 3(a), or an amount to be determined by use of the Consumer Price Index formula).

e. The levy of special assessments must require not less than the same notice and approval as the increase of annual assessments, and should be by a vote of two-thirds of each class of members. Local law may be different in some jurisdictions that hive statutes governing these voting requirements.

f. The developer may not be exempt from the payment of assessments. It is not acceptable in a developer-controlled PUD that the covenants provide that assessments for any lot be delayed until the lot is improved, or that a dwelling thereon be first

occupied, or that the lot itself be conveyed. If the HOA is to perform services which will not benefit developer's unoccupied units, such as recreational supervision, a covenant provision may provide for a scaled down assessment for lots without an occupied dwelling, provided the financial stability of the association will not be jeopardized. In no event, however, should the scaled down assessment be less than 25 percent of that chargeable to other lots. If such scaled down rate is allowed, a full assessment must immediately and permanently attach to any lot upon the first occupancy of a dwelling thereon, although ownership of that lot is retained by developer. An exception to this requirement may be considered in large projects in which a budget has been established and the developer's responsibility to the HOA is to insure that budget by agreeing to make up any deficits. In such cases the VA regional office must determine the following:

(1) That the budget is reasonable and will realistically maintain HOA common area;

(2) That the individual owner's assessment share is reasonable and in proportion to the total number of lots involved; and

(3) That the developer's obligation creates a lien against land it owns in the PUD. It is most important for the protection of the HOA that the developer's budget responsibility be lien supported.

g. All properties dedicated to, and accepted by, a local public authority and all property owned by a charitable or nonprofit organization exempt from taxation under State law may be exempt from the HOA assessments, except that no land or improvement devoted to dwelling or commercial use may be so exempt (VA Form 26-8200, Appendix Form No. 1).

h. The interest rate chargeable on delinquent assessments generally may not exceed 6 percent per annum in proposed projects. A larger percentage will be acceptable in existing developments when the covenants so provide and cannot be readily changed.

i. Neither annual nor special assessments may be used for the construction of capital improvements during the development period if value is to be given for such improvements.

j. The HOA assessment may not be used to maintain property in which the HOA does not own an interest, except that the association may perform exterior maintenance upon residences (VA Form 26-8200, Appendix Form Nos. 2a, 2b, and 2c).

k. A covenant providing for group or blanket hazard insurance of individual units with premiums paid through HOA assessments in a PUD, or in a specific section thereof, will be acceptable. When the documents provide for group hazard insurance on units, the information brochure in proposed projects must explain that the

policy covers losses on the structure only and that the group policy does not provide individual liability or personal contents protection.

1. Homeowners shall not be required by the declaration to rebuild after destruction by fire or other casualty loss unless the units are insured under a group or blanket hazard insurance policy which contains a Replacement Cost Endorsement providing for replacement of a unit from insurance loss proceeds. When a policy with a Replacement Cost Endorsement is to be secured, or there is such a policy already in force, regional offices should recommend but not require that the sponsor or the HOA seek additional endorsements to assure the continuation of full replacement costs of the required reconstruction. The requirement for a Replacement Cost Endorsement to the blanket hazard policy may be waived in an existing project with a mandatory rebuilding clause when the units are already insured under a group policy which does not contain such endorsement. The HOA shall not be empowered by the declaration to rebuild a unit and assess the cost to the unit owner. However, the declaration may provide that any shortfall in funds necessary to rebuild a unit by reason of under coverage through the blanket policy may be obtained through a special assessment levied against all unit owners. In any event, it is permissible for the declaration to require clearance of the lot within a reasonable time after unit destruction.

m. Mortgagees may not be required to collect assessments. Arrangements may be made with mortgagees for the collection of assessments, but such service must be voluntary and may not be a cause for default under the residential mortgage.

16.08 THE HOMEOWNERS ASSOCIATION

a. VA strongly recommends that the HOA be incorporated to avoid problems concerning title, officers' and members, individual liability, and taxation. If an unincorporated HOA, there must be a full explanation by the sponsor of why such a form was used and how each of the named problems is to be handled.

b. Organization documentation must be in compliance with the law of the jurisdiction in which the property is located.

c. The covenants must contain a provision assuring the lot owner of automatic membership and voting rights in a nonprofit association, or other appropriate organization, empowered to levy lien-supported assessments (VA Form 26-8201, art. III, sec. 1). Developments in which legal title to common areas is vested in a trustee who controls the operation of the project are generally not preferred. Homeowners in trusteeship developments ordinarily do not have voting rights and cannot exercise any control over the operation and management of the association. The HOA is considered superior not only because it provides protection to the individual homeowners against tort liability by reason of its

corporate structure but the homeowners also have a greater voice in the management of an association as opposed to a trust. In some jurisdictions if the beneficiaries of a trust are afforded authority to make binding decisions concerning the rest of the trust, it has been determined that a true trust does not exist. However, the trust format need not preclude approval of existing projects if all. of the other factors are acceptable. In proposed projects, developers are encouraged to use the HOA arrangement. Membership must be appurtenant to, and inseparable from, unit ownership. The corporate documents may not permit the association to exercise any discretion in admitting unit owners to membership (VA Form 26-8202, art. V). However, nonvoting membership may be granted to tenants and other persons who make use of the recreational facilities. If the membership in the HOA or the resulting assessment is voluntary, the development must be considered as a regular subdivision for land planning purposes, and the common area may not be considered in the CRV valuation other than the effect it may have on the neighborhood.

d. The developer's control of the association must be limited as to time and extent. A weighted vote of more than 3 to 1, or a retained developer veto right beyond 75 percent sellout, is generally unacceptable. In addition to the automatic transfer of control to the homeowners upon the sale of 75 percent of the lots, an alternate event for the termination of developer's weighted vote must be provided to preclude unreasonably prolonged developer control in a slow sales market. The most common provision is a delimiting date upon which developer's weighted vote will cease should that date precede the event of a 75 percent sellout. The specific date selected should be no later than the estimated time required to complete and market 75 percent of the dwellings in the development (VA Form 26-8201, art. III, sec. 2; and VA Form 26-8202, art. VI). (See par. 16.12.) In very large projects different approaches may be necessary to insure sufficient developer control for completion and marketing, with appropriate safeguards in the event of developer project abandonment. Generally, declarant's special voting rights should terminate if construction is abandoned (e.g., no new unit construction has been initiated for a period of 6 months unless there is evidence of continuing construction). Sponsor's request for variance of this requirement, with explanation of why it was needed, should be forwarded by the VA regional office to Central Office for approval.

e. While the developer controls the association, any action which may affect the basic organization of the HOA or the common area such as merger, consolidation, or dissolution of the HOA; dedication, conveyance, or mortgage of the common area; annexation of addition properties; or amendment of previously approved documents, must be approved by VA (VA Form 26-8201., art. VI, sec. 5; VA Form 26-8202, art. XI; and art. XIII, sec. 1 of VA Form 26-8203, Bylaws).

f. Any rights reserved by the developer of a PUD project must be reasonable and consistent with the overall plan for each submission. The following rights, when reserved by the developer, its affiliates, the sponsor of a project, or any other party, are usually unacceptable:

(1) Leasing of common areas to the HOA;

(2) Accepting leases from the HOA;

(3) Accepting franchises or licenses from the HOA for central television antennas or like services;

(4) Reserving the right to include in a PUD adjoining land without adequate restriction assuring that its future improvement will be of comparable style, quality, size and cost;

(5) Retaining the right, by virtue of continued association control or otherwise, to veto acts of the HOA or to enter into management agreements or other contracts which extend beyond the date unit owners obtained control of the HOA; and

(6) Reserving an unlimited right to amend the covenants or to replat lots or common area unless limited to changes specifically required by a reviewing agency to meet its requirements.

g. If the development includes multifamily or other rental housing, the total vote of the owner or owners of such housing may not exceed 49 percent of the total vote cast.

h. The bylaws must permit participation by the homeowners during and after the development period. Unless local law provides otherwise, membership meetings should be held at least annually, beginning within I year after incorporation. Special meetings of the association should be permitted upon written request of a reasonable percentage of the unit owners other than developers. Quorum requirements for regular business should not be so high as to preclude valid meetings. Nomination for candidates for director from the floor should be permitted. Cumulative voting should not be permitted unless required by State law. Directors and officers should normally serve without compensation. (See VA Form 26-8203, art. III, secs. 1, 2, and 4; art. IV, sec. 4; and art. V, secs. 1 and 2.)

i. The board of directors must be sufficiently large to permit reasonable representation of the lot owners. A board of three directors should be provided only in very small developments or on the initial board. Most associations should have a board of at least seven or nine directors (VA Form 26-8203, art. IV, sec. 1).

j. If the association is authorized to suspend a lot owner's right to use recreational facilities or his or her voting rights for infraction of its rules or regulations, the suspension should not exceed 60 days (VA Form 26-8201, art. II, sec. 1(b); and VA

Form 26-8203, art. VII, sec. 1(b)). If the suspension of these rights is for failure to pay assessments, it may extend for the time the assessments are delinquent.

k. Each lot owner, as well as the association, must be empowered to enforce the covenants (VA Form 26-8201, art. VI, sec. 1). The developer should not be specifically authorized to enforce covenants. The developer has such authority while it owns a lot in the development and, after all lots are sold, it has no reason to exercise such authority.

1. The books and records of the association must be available for inspection by the members at reasonable times (VA Form 26-8203, art. X).

m. Amendment of the covenants should be difficult, but not impossible. VA recommends a requirement of 90 percent of lot owners to amend the covenants during the first 20 years and 75 percent thereafter (VA Form 26-8201, art. VI, sec. 3). To amend the articles of incorporation (if State law permits) at least 75 percent of the lot owners should assent (VA Form 26-8202, art. X). The bylaws need only a majority vote of the lot owners to amend (VA Form 26-8203, art. XIII, sec. 1). Provisions allowing amendment of the bylaws by the board of directors are generally unacceptable.

n. If any of the foregoing provisions conflict with local ordinances, the local ordinance will govern.

16.09 SUPPORTING DOCUMENTS

a. Plats must either be recorded or in final form ready for recording. Incomplete plats or schematic drawings are unacceptable. Plats must show the area to be subjected to the covenants. The lots and common area locations as well as utility easements should be shown by metes and bounds. There should be a dedication of common areas to homeowners to preclude the implication of public use (VA Form 26-8200, Appendix Form No. 6). Public streets should be designated. There should be an incorporation of the covenants by reference. If map or plat has been recorded, an amendment will not be necessary if the property and the common area can be identified and pinpointed by the description given in the covenants and an acceptable dedication of the common area is contained in the declaration of the project. If the language is unfair, ambiguous or contradictory, the VA regional office will refer the matter to its District Counsel.

b. Many PUDs are small enough and their common areas so minimal that professional management is not necessary. VA does not require professional management of PUDS. The powers given to the HOA by the articles of incorporation and bylaws are fundamentally for "use control" and maintenance of the common areas. These powers normally include management which may be

delegated to a professional manager. If a developer or developer-controlled board chooses professional management, the management agreement must be reviewed by the VA regional office and found to be reasonable. The agreement should be terminable for cause or upon reasonable notice, and run for a period of from 1 to 3 years, renewable by consent of the association and management.

c. When a project is submitted by a builder or developer, an information brochure written in simple terms must be prepared for use in the sales program to inform all home buyers about the HOA and the rights and obligations of lot owners. Specific information to be included in the brochure is set forth on page iii of VA Form 26-8200.

d. When applicable under local law, it is recommended that the deed to the lot owners contain a clause precluding any implication that the grantee takes title to the middle of abutting private streets or common areas (VA Form 26-8200, Appendix Form No. 7).

e. When submission is by a builder or developer, the proposed purchase agreement must avoid unfair contractual features and marketing practices and meet the requirements of 38 CFR 36.4303(j) as to contract purchase price or cost exceeding the VA CRV as well as 38 U.S.C. 1806(a) relating to escrow deposits.

16.10 PRE-SALE REQUIREMENTS

a. The need for a pre-sale requirement must be considered in all cases. The number or percentage of pre-sales required, if any, will vary with the circumstances and may be as high as 80 percent. All bona fide sales agreements; i.e., VA/FHA (Federal Housing Administration), conventional financing, and cash purchases, will be counted to determine whether the pre-sale requirement is fulfilled. When imposed, the pre-sale requirement will be set forth in the initial feasibility letter, in the Special Conditions, and until the requirement has been met, in each MCRV (VA Form 26-1843a, Master Certificate of Reasonable Value) or CRV. Until the requirement is met, no evidence of guaranty will be issued. The pre-sale requirement will be stated as follows:

"Evidence of guaranty will not be issued until receipt of proof that (total number or percentage) of homes have been sold."

b. When the local FHA office is considering acceptance of the development, coordination with that Department will include a decision to impose a pre-sale requirement and, if so, the number or percentage. While VA is not bound to follow FHA's course in this, due weight will be given to its views. If, prior to submission of the development to VA, FHA has already set a pre-sale requirement, VA will normally specify the same pre-sale requirement. To avoid inconvenience to the developer, VA regional offices may accept the

statement of the appropriate official in the local FHA office as to the number or percentage of sales attained and will not require a second submission of proof.

16.11 PROCESSING PUD'S WITH MINIMAL COMMON AREA

If part of a homeowner's title grants use and enjoyment to common property owned by an association with a mandatory membership, VA regional offices consider the usual homeowner "trade-off" (common area or lot size) before it decides the common property value in the CRV. If a regional office determines that the PUD common area is not a major or essential element of the development (e.g., open flood plain or berm strip), the project will not be processed as a PUD, but will be treated as a regular subdivision with a mandatory HOA (see par. 16.06a(2) and (4)). VA gives careful consideration to these projects with mandatory HOA's with minimal common areas before waiving PUD review.

16.12 PROCESSING PUD'S WITH MORE THAN MINIMAL COMMON AREA

If there is a mandatory HOA and the VA regional office finds the common area is more than minimal, then it ensures that:

a. The mandatory assessment and membership are considered in computing the value for the CRV;

b. The lien of assessments is subordinate to the first mortgage or deed of trust, unless it falls within the exceptions stated in 38 CFR 36.4352;

c. Title qualifies under 38 CFR 36.4350; and

d. The organizational documents are not so objectionable to preclude acceptance. The following are usually unacceptable:

(1) Lot owners having no vote or control in the management of the HOA;

(2) Right to vote delayed for an unreasonably long time;

(3) No limitation or control by the lot owners over increases in assessments;

(4) No protection against arbitrary or capricious actions by the developer or its successors, including retention of rights by the developer after its ownership interest in the land has ceased; and

(5) Lot owners compelled to pay assessments for the use of public facilities and services which are normally paid through taxes.

NOTE: This list is not all inclusive, nor does it imply that the existence of one item will result in disapproval of a project, especially an existing project. A regional office must examine the remainder of the document clauses to determine if, as a whole, they are fair and reasonable, and protect the interests of the lot owners.

[16.13 PROCESSING ESTABLISHED EXISTING PUDS (PLANNED-UNIT DEVELOPMENTS)

a. When a unit proposed as security for a VA guaranteed loan is located in a PUD, it is the lender's responsibility to determine that the PUD has been previously accepted by VA, or accepted by HUD/FHA and is eligible under the reciprocity agreement, or for determining what is necessary to gain acceptance so that the unit will be eligible for VA financing. In the case of an established existing PUD, as defined below, the lender has the responsibility to make the final determination that the project satisfies the defined criteria in subparagraphs c and d below. To make the determination that the project is an established existing PUD, the lender often will need access to certain project information that is not always readily available (such as legal documents, ownership and project status, and/or relationship with an overall development). For this reason, the lender may rely on the PUD homeowner's association, the PUD management company, or the fee appraiser as sources for information, although the lender is ultimately responsible and is expected to make a reasonable effort to ensure the accuracy of the information obtained from these sources.

b. Definitions. The definitions in paragraph 16.02 apply to an established existing planned-unit development.

c. Established Existing PUD. For the purposes of this paragraph, a PUD exists where:

(l) Control of the homeowner's association has been turned over to the unit purchasers, other than the declarant or affiliate of the declarant, and the unit purchasers have been in control of the association for at least 1 year.

(2) The declarant or builder is no longer marketing any units in the project for initial transfer to unit owners and all ongoing sales are existing resales.

(3) All common areas and facilities have been completed and conveyed to the homeowner's association free and clear of all financial liens and encumbrances. Title to the association may be confirmed by title policy or other locally acceptable evidence of title or by written confirmation by the president of the homeowner's association. The deed alone is not considered adequate assurance.

(4) The project is not subject to expansion, annexation, or additional phasing by the declarant or a successor. Projects that are a subassociation or part of a larger development with an umbrella or master association or similar arrangement will be considered by local VA offices on a case-by-case basis for eligibility of processing under this procedure. For example, VA offices will give consideration to a subassociation located in a fully developed and sold out or almost sold out master or umbrella association.

d. Lender Certification

(1) When processing a loan for a property in an established existing PUD, the lender must certify that the PUD meets the following requirements:

(a) The project meets the definition of an existing PUD (i.e., the association qualifies as an existing planned community under subparagraph c above);

(b) The documents do not contain any sale or lease restrictions other than a minimum lease term of up to 1 year (38 CFR 36.4350(b)(5)). NOTE: Age restrictions or restrictions imposed by State or local housing authorities which are allowable under 36.4350(b)(5)(iv) must be reviewed by VA.

(c) The VA guaranteed loan will be secured by a first lien on realty (38 USC 3703(d)(3)). NOTE: Any covenant that establishes a superior lien must be approved by VA prior to recordation. Consequently, projects with a superior lien must already be accepted by VA or be submitted to the local office for review. Exceptions to this are made for (1) projects whose documents were recorded prior to June 6, 1969; and (2) those States which have adopted the Uniform Common Interest Ownership Act (UCIOA) provision that association assessments which were due in the 6-month period immediately prior to institution of first mortgage foreclosure proceedings prime or become superior to the first mortgage or deed of trust. Projects in which the organizational documents satisfy these exceptions do not require prior VA acceptance. It should also be noted that while loans subject to the UCIOA provision will be eligible for guaranty under the VA program, no claim payment will be made to holders for any payments they may have had to make to clear the 6-month primed association assessments.

(d) The association does not maintain a community water or sewer system.

(2) The certification will be on the lender's letterhead signed by an officer of the lender and in the following format:

"This is to certify that the subject property is located in an established existing planned unit development known as (name of project) and that the project meets the criterion in VA Pamphlet 26-7, VA Lender's Handbook, paragraph 16.13."

(3) Lenders must submit the required certification with each request for guaranty for a unit located in an established existing PUD. VA offices will not maintain or publish lists covering such projects.

e. VA minimum property requirements and other procedures for underwriting and processing guaranteed loans will still apply.

f. Lenders should continue to submit projects with homeowner associations that are not considered as "established existing PUDs to VA for prior approval. In those cases, the submission requirements of paragraph 16.15 will be followed.]

16.14 VA REGIONAL OFFICE IMPLEMENTATION INSTRUCTIONS

a. Loan Guaranty Division - Initial Review

(1) Organizational documents will be reviewed by the Loan Guaranty Construction and Valuation Section for a determination that all necessary documents have been submitted and conform to VA policy. If a submission is incomplete, the sponsor will be requested to supply missing or incomplete documents.

(2) The Regional Office Loan Guaranty Division will then provide written recommendations and requirements for project approval.

(3) Processing Under the Limited Review Procedure

(a) After the Loan Guaranty Division's initial review, each new PUD submission is usually referred to VA District Counsel. However, referral to District Counsel is not required when a complete set of project documentation is submitted, accompanied by a certification from the sponsor or sponsor's attorney that the documents are identical to a previously approved and specifically identified set of documents, except for the name and the legal description of the project. Referral to District Counsel is also not required if the completed set of documents consists of VA Form 26-8200, accompanied by a certification from the sponsor or sponsor's attorney to that effect. In addition, if it is determined by the Loan Guaranty Officer that the submitted project documents are a complete set of the Suggested Legal Documents for Planned-Unit Developments, properly completed, the project may be approved without District Counsel review even though no certification is submitted. The VA regional office should be contacted concerning limited review procedures.

(b) If there are variations in the set of PUD documents, other than name and legal description, from the documents of a previously approved project or VA Form 26-8200, each variation must be specifically shown in the sponsor's or sponsor's attorney's certification. Only these variations will be subject to VA District Counsel or Loan Guaranty Division review and approval, as appropriate.

(c) Some documents, such as the plat, public offering statement (information brochure), sales contract for proposed developments, vary from project to project. Regional offices will seek VA District Counsel review and guidance on these documents, particularly as to the sufficiency of the plat. District Counsel assistance will also be sought if there are inconsistencies between project legal documentation; e.g., plat and the description of the common area in the declaration.

(d) The VA Loan Guaranty Officer may elect to have a full District Counsel review of project legal documentation which meets the criteria for a lesser review. Normally, such full reviews would be based on items such as receipt of an incorrect sponsor's or sponsor's attorney's certification, or the belief that the party making the certification lacks the requisite expertise in planned-unit developments and VA requirements.

b. Office of VA District Counsel

(1) District Counsel will review organizational documents to determine that:

(a) The declaration of covenants, articles of incorporation, bylaws, plats, and other related exhibits comply with local statutory and common law. If additional information is required to conform to local law, it will be detailed.

(b) The project scheme for land development is legally enforceable.

1. The uniform scheme must be clearly set forth by the plat and covenants, and must run with the land.

2. The scheme must apply uniformly to all of the lots subject to the covenants. If it is not uniform, it may be unenforceable under local law (see par. 22.3, TB 50, ULI, The Homes Association Handbook, revised edition).

3. Any retained rights in the declarant to modify the covenants may make them unenforceable.

(c) The common area is clearly defined or can be defined by metes and bounds. If recorded plats (or plats to the recorded) are referenced they should be identified (i.e., complete title, date, name of the draftsman, place where recorded, and book and page). The common area may be defined as all of the described property, less the lots and streets as shown on the plat, if the perimeter of the property is shown by metes and bounds, and the lots and streets are described by metes and bounds on the plat.

(d) Common area for which PUD consideration is based and value given is not dedicated to the public either by an express or implied provision. Conflicting dedicatory provisions of plats and covenants must be interpreted under local law.

(e) Easements granted in plats, covenants and deeds clearly identify encumbered realty. It is acceptable to describe them in the covenants as public utility easements originally programmed, described and/or platted, and existing at the time the common area is conveyed to the HOA. If the easements are too vague, clarification is necessary.

(f) All organizational document amendments and PUD annexations have been properly made in accordance with the procedures in the documents.

(g) Nothing in the documents precludes unit mortgages from establishing valid first liens.

(h) Nothing in the documents precludes veteran-purchasers from acquiring title as specified in paragraph 16.04.

(2) VA District Counsel at each regional office should review VA Form 26-8200, and furnish the Loan Guaranty Division a one-time certification of the legal adequacy under State law of the suggested legal documents in the regional office's jurisdictional area(s).

c. VA Loan Guaranty Division Follow-up

(1) Regional office's will notify the sponsor of the final determination. The notice will indicate any special conditions which must be met prior to VA guaranty (e.g., pre-sale requirement, completion of common areas).

(2) Draft Documents. When the initial review of organizational documents is conducted on the basis of unrecorded draft documents, VA regional offices will establish controls to insure that the organizational documents approved by VA, are recorded without change.

d. FHA Coordination. VA regional offices will forward a copy of final project reviews to the local FHA insuring office.

16.15 PLANNED-UNIT DEVELOPMENT SUBMISSIONS REQUIRED FORMS AND DOCUMENTS

Submit all documents in duplicate unless otherwise indicated.

Legend: X - Required
AA - As Applicable

SECTION 1. Documents and Project Data. One-time submission only for each project or individual request.

Draft organizational documents are acceptable.

SECTION 2. Special Requirements. If applicable, these items must be submitted before guaranty of any loan.

	BUILDER-DEVELOPER	RESALES INDIVID-UAL UNITS	
1. Documents and Project Data			
a. Declaration of Covenants, Conditions & Restrictions.	x	x	
b. Articles of Incorporation (if applicable).	AA	AA	
c. Bylaws	x	x	
d. Documents a and/or b and c above for developments that are subject to more than one set of area use restrictions or require membership in more than one HOA.	AA	AA	
e. Declaration of Annexation.	AA	AA	
f. Recorded or final form plat or map with all proposed certifications, dedications and other narrative material included or incorporated by reference. Design and size of recreational facilities should be shown.	x	x	
g. Developer's general plan and schedule for development if project is staged.	x		
h. Cross-easement.		AA	AA
i. Facilities' Leases.	AA	AA	
j. Management Agreement.	AA	AA	
k. Service Contracts.	AA	AA	

	BUILDER-DEVELOPER	RESALES INDIVIDUAL UNITS
1. Information Brochure.	x	
m. Form of purchase contract for individual living unit.	x	
n. Form of grant, deed or leasehold agreement (in those jurisdictions where leaseholds have been previously authorized by VA) to be used in conveying individual living units.	x	
o. Current association budget (proposed budget if project is a proposed submission).	x	x
p. Statement signed by officer of board of directors of HOA specifying any existing or pending special assessments and any pending litigation affecting the association or unit.	x	x
q. State reviewing agency's report.	AA	AA
r. VA Form 26-1805, VA Request for Determination of Reasonable Value (one set for each plan type or individual unit on MCRV applications).	x	x
s. VA Form 26-1852, Description of Materials, Plans and Specifications, for proposed projects.	x	
2. Special Requirements		
a. Certified copies of recorded organizational documents must be submitted that conform to previously accepted drafts.	x	x
b. Builder's warranty if unit is less than 1 year old.	x	
c. In proposed projects, VA compliance inspection procedures or VA acceptance of FHA compliance inspection procedure applicable to proposed construction or evidence of enrollment in 10-year protection plan and final inspection.	x	
d. Evidence that recreational facilities have been completed and common area conveyed to approved HOA for stage under consideration.	x	x

	BUILDER-DEVELOPER	RESALES INDIVID-UAL	UNITS
e. Acceptable evidence that title to common area in HOA is free of encumbrances.	x	AA	
f. Lender's certification that pre-sale requirement has been met.		AA	AA
g. Evidence of flood insurance.	AA	AA	
h. Termite certification	AA	x	

CONTENTS

CHAPTER 17. VA POLICIES AND PROCEDURES FOR CONDOMINIUM LOANS UNDER 38 U.S.C. 1810(a)(6)

CHAPTER 17. VA POLICIES AND PROCEDURES FOR CONDOMINIUM LOANS UNDER 38 U.S.C. 1810(a)(6)

17.01 PURPOSE

The following are VA policies and procedures concerning the processing of loans to purchase condominiums.

17.02 PROJECT APPROVAL CRITERIA

The criteria for condominium project approval have been incorporated into VA regulations as 38 CFR 36.4356 through 36.4360a. The following brief explanations of each regulation are provided to assist veterans, declarants, lenders, and VA personnel.

a. Title 38 CFR 36.4356 is a general information regulation reciting certain provisions of Chapter 37 of Title 38, United States Code, and certain VA regulations which are not applicable to the condominium loan guaranty program. In addition, the regulation provides the definitions applicable to condominium loans and requires that the condominium project be approved by VA prior to the guaranty of the first unit loan. Once a condominium has been approved, the individual unit loans may be submitted either on the prior approval basis or on the automatic basis, if all other requirements have been met.

b. Title 38 CFR 36.4357(a) explains the basic types of ownership arrangements acceptable for condominium processing. VA approval of any amendments to the condominium documentation is required while the declarant is in control of the homeowner's association. Developmental plans in proposed condominiums may be flexible to reflect changes in market conditions.

c. Title 38 CFR 36.4357(b) sets forth the legal estate (fee simple, leasehold) which must be obtained by each unit owner. The declaration also must allocate an undivided interest in the common elements to each unit.

d. Title 38 CFR 36.4357(c) requires that the legal documentation, including the declaration and bylaws, complies with local law. Appropriate legal documentation must be recorded and all legal documentation must be made available to parties or prospective parties in interest.

e. Title 38 CFR 36.4357(d) sets forth the requirement for proper real property descriptions, and the requirement that the developmental plan be included in the declaration for proposed condominiums.

f. Title 38 CFR 36.4358(a) requires that any rights or restriction reserved by the declarant be clearly set forth in the declaration. Examples of reserved rights or restrictions which may be retained, or reserved rights or restrictions which the declarant is prohibited from retaining is included.

g. Title 38 CFR 36.4358(b) sets forth the association's rights and restrictions which must be included in the declaration. VA policy requires a reserve fund for periodic maintenance, repair, and replacement of common elements in both new and proposed projects.

h. Title 38 CFR 36.4358(c) describes the unit owners' rights and restrictions which must be included in the declaration, including voting rights, rights of first refusal, and leasing restrictions.

i. Title 38 CFR 36.4358(d) recommends that the declaration contain a provision which would grant to the owners' association and unit owners a right of legal action for necessary enforcement of the declaration, bylaws, and other appropriate documentation.

j. Title 38 CFR 36.4359(a) sets forth the requirements for developer transfer of control of the owners, association to the unit owners.

k. Title 38 CFR 36.4359(b) explains VA policy toward real estate taxes.

1. Title 38 CFR 36.4359(d) establishes the general requirement for condominium bylaws.

m. Title 38 CFR 36.4359(e) sets forth VA insurance requirements and recommendations including fidelity bond coverage.

n. Title 38 CFR 36.4360 explains VA requirements for flexible condominiums including both expandable and series developments. In expandable projects, local VA offices are delegated the authority to approve the merger of condominium regimes and to establish the necessary minimum coverage for the liability insurance policy.

o. Title 38 CFR 36.4360a(a) sets forth the appraisal requirements for resale of existing condominium units, while 38 CFR 36.4360a(b) sets forth the appraisal requirements for new and proposed condominiums, including conversions.

p. Title 38 CFR 36.4360a(c) explains VA pre-sale requirements which must be met prior to the guaranty of the first individual unit loan in a project. Local VA offices may lower the pre-sale requirement from 70 percent to as low as 51 percent based on the criteria contained in the regulation.

q. Title 38 CFR 36.4360a(d) establishes VA requirements for a warranty, both for the individual unit and the common elements in certain projects. No warranty is required for units in condominium conversion developments.

r. Title 38 CFR 36.4360a(e) describes VA policies when a condominium project has an offsite facility owned by an owners' association with mandatory membership by condominium unit owners.

17.03 AMENDMENTS TO DOCUMENTS

In addition to the requirements and recommendations included in VA regulations, VA recommends that declarants have amendment procedures for the declaration or equivalent document, amendable by an instrument executed by not less than 67 percent of unit owners. This conforms with guidelines formulated by the Interagency Condominium Task Force.

17.04 RIGHTS OF MORTGAGEES

VA has no objection to the condominium regime specifying the following rights for the holders of first mortgages, provided each mortgagee informs the association in writing of its appropriate address:

a. Prior approval by all first mortgagees, who request in writing to be so notified, before the association can:

(1) Abandon condominium status, or partition or subdivide a unit or the common elements;
(2) Change the percentage interest of unit owners; or
(3) Materially amend the legal documents.

b. Timely written notice to first mortgagees, requesting in writing to be notified, of:

(1) Any condemnation or eminent domain proceeding; or

(2) Substantial damage or destruction to the common elements.

c. First mortgagees also may be given the right to examine the books and the records of the association, to receive annual audited financial statements, to be given notice of association meeting, and to be entitled to send a representative provided first mortgagees request such rights in writing.

17.05 APPRAISAL AND INSPECTION REQUIREMENTS

a. Acceptance of HUD-Approved Projects. For the purpose of subparagraphs b and c below, condominium projects accepted by HUD (Housing and Urban Development) will be accepted by VA. Exceptions to this general rule will be made where VA's regulations are contravened. With the exception of HUD conditional commitment submissions to be converted to VA CRV's. (VA Form 26-1843, Certificate of Reasonable Value), VA regional offices must be provided with the organizational documents required by paragraph 17.12, which will be maintained for appraisal purposes.

b. Existing Resale Condominiums. The project and unit(s) proposed as security for guaranteed financing will be appraised to ensure that they meet MPRs (minimum property requirements), and are safe, sanitary, and structurally sound. Sponsors will submit VA Form 26-1805, VA Request for Determination of Reasonable Value, to obtain appraisals. VA regional offices may not accept appraisal requests until the organizational documents required by paragraph 17.12 have been submitted and found acceptable.

(1) MPRs. VA MPRs for existing construction for condominiums are the same as used for existing construction in single-family residential construction, except references relating to water, heating, ventilating, air-conditioning, and sewer service which, for purposes of condominiums, may be supplied from a central source.

(2) Repair Requirements. Repair requirements will be specified for two areas, the individual living units and the common elements. (Common elements are parts of the project which all residents share by equal usage rights; i.e., recreational facilities, hallways, rooftops, elevators, lobbies.)

(a) Individual Units Deficiencies. Deficiencies noted in the individual unit(s) deemed mandatory for repair to meet the MPR's will be appraised "as repaired." Compliance inspections required will be noted on the CRV.

(b) Common Element Deficiencies. Deficiencies in the common areas will be noted, depreciated accordingly, and reflected in value, unless they endanger the health and safety of the occupants, in which case they are shown as required repairs on the CRV.

(3) Termite Inspection Requirements. A wood-destroying insect inspection and clearance certification by a recognized pest control operator will be required on horizontal condominiums located in areas subject to infestation. This certification is not required for low rise condominiums, but at time of appraisal the VA fee appraiser will note any observed infestation or conditions relevant to the MPRS.

c. Proposed Condominiums or Existing Condominiums with Declarant in control or Marketing Units

(1) Low Rise and High Rise Condominiums and All Conversions (Including Horizontal Conversions)

(a) Submissions. The organizational documents and plans and specifications, as required by paragraph 17.12, must be submitted.

(b) Construction Standards. Proposed condominiums including all types of conversions, shall conform to standards and/or inspection requirements as required by local VA offices. Only the alterations, improvements or repairs to buildings proposed for conversion must comply with current local building codes, unless local authorities require total code compliance on the entire structure. Portions of converted condominiums not being altered, improved or repaired must be appraised to ensure that they meet the MPRs and are safe, sanitary and structurally sound.

(c) Inspections. Inspections during construction will be performed in accordance with instructions of local VA offices. In all cases, there will be a final VA inspection to verify the completion and inclusion of visible items (including all of the project's buildings and common elements) upon which VA has based its valuation from the plans and specifications. This will be accomplished by a fee or staff inspection, documented by completion of VA Form 26-1839, Compliance Inspection Report, for each unit appraised. In conversion projects, inspections may be required to verify that the declarant renovation program, the basis for VA's valuation, has been completed for the unit and common elements. These inspections may be performed by the fee appraiser, compliance inspector or VA staff, as determined appropriate by the VA regional office.

(2) Horizontal Condominiums (Horizontal Conversion Excluded)

(a) Submissions. Sponsors submit the same exhibits required for single-family construction.

(b) Proposed Construction Minimum Property Requirements. The same standards that apply to proposed single-family construction apply to proposed horizontal condominiums. VA construction and valuation policies and procedures applicable to single-family residential construction also apply to such submissions.

d. Condominium Conversion -- Additional Requirements. Structural and mechanical component statements are required for all condominium conversion projects with a declarant in control or marketing units not occupied previously. Expandable condominium conversions require engineering and/or architectural statements on each stage or phase. These statements must be from a registered professional engineer and/or architect and describe the present condition of all accessible structural and mechanical components material to the use and enjoyment of the conversion condominium and must include a statement of the expected useful life of these components: roof, elevators, heating and cooling, plumbing and electrical systems, assuming normal maintenance. A minimum of 10 years estimated remaining useful life is required on all structural and mechanical components. As an alternative, the declarant may contribute an amount of funds to the condominium reserve fund equal to a minimum of one-tenth of the estimated

costs of replacement of a major structural or mechanical component (as determined by an independent registered professional architect or engineer) for each year of estimated remaining useful life less than 10 years; e.g., 7 years remaining useful life equals a three-tenths required declarant contribution to the reserve fund of the component's estimated replacement cost. The statements and remaining useful life requirements are not applicable to existing resale conversion projects. In declarant-controlled projects, a statement by the local authority on the adequacy of offsite utilities servicing the site (e.g., sanitary or water) is also required. If local authorities decline to issue a statement, one may be obtained from a registered professional engineer.

e. Change Orders. Should the declarant change plans, it must be effected by VA Form 26-1844/HUD Form 92577, Request for Acceptance of Change in Approved Drawings and Specifications, provided the change is within the individual purchaser's air lot. However, any change affecting the ratio of ownership interest or a change in the common elements must be approved by the percentage vote of the membership of the condominium association (as required by the declaration or State statute, as applicable). A written statement signed by an officer of the Board of Directors of the Council of Co-owners is required as evidence of approval. This statement must be submitted with VA Form 26-1844. In those circumstances, when the declarant makes changes prior to the first sale in a condominium project, they may require amendment of the organizational documents. All changes must be approved in writing by the local VA office.

f. Commercial Areas. Generally, VA has no objection to the presence of commercial areas within existing or proposed condominium developments, but these interests will be considered in the document review and valuation process.

g. Optional Housing Extras. A declarant may offer options to condominium home buyers (e.g., dishwasher, garbage disposals), as in single-family subdivision homes. Condominium developments differ from single-family subdivisions in that the initial values assigned to the various units may determine the unit ratios of common area ownership, voting rights, and assessment liability. The initial unit ratios in the declaration must not change during the life of the condominium project, notwithstanding the installation of optional extras, without an amendment to the declaration by the required percentage of voters.

17.06 FOR APPRAISAL (PROPOSED AND EXISTING CONDOMINIUMS

VA Form 26-1805 will be completed in accordance with instructions thereon except for the following special instructions:

a. Item 2, Property Address. Include the apartment number or similar identification of the unit.

b. Item 3, Legal Description. Include grant deed verbiage which refers to the declaration with appropriate legal description.

c. Item 6, Lot Dimensions. Not required.

d. Item 30, Comments on Special Assessments or Homeowners Association Charges. Include condominium, assessment fee, any special assessments, and specify which utilities, if any, are covered by the assessment fee.

17.07 LOAN SUBMISSIONS AND POLICIES

a. Prior to VA guaranty of an individual loan in a condominium, any limiting conditions (e.g., recordation, common element completion, or pre-sale requirements) to VA's overall project approval must be cleared acceptably. Condominium loans may be submitted either on the prior approval or automatic basis. Loan submissions must conform to the requirements for prior approval or automatic single-family loans. Lenders should annotate "CONV" in item [20 of the revised VA Form 26-1802a, HUD/VA Addendum to the Uniform Residential Loan Application], and item 7 of VA Form 26-1820, Report and Certification of Loan Disbursement, for conversion projects. [Section V (Proposed Monthly Housing Expense) of the URLA, Uniform Residential Loan Application, and] items 16, 17, and 18 of VA Form 26-1820, must reflect the condominium assessment fee and any special assessments.

b. Combination residential and business property loans (38 CFR 36.4353), supplemental loans (38 CFR 36.4355) and expenditures for correction of structural defects (38 CFR 36.4364), are not applicable to condominiums. (See 38 CFR 36.4356(a).)

c. Veterans may not be charged for certification of architects or engineers, which may be required by VA in lieu of local building code inspections. No charge may be levied against veteran-purchasers for statements required by 38 CFR 36.4360a(b)(7).

d. Individual loan submissions are subject to the limitations of [38] CFR 36.4312 (Charges and Fees).

17.08 VA LOAN GUARANTY DIVISION - INITIAL REVIEW

a. When all required documentation has been submitted, it will be reviewed by the VA Construction and Valuation Section for compliance with VA condominium project approval policies exclusive of legal considerations. Property descriptions are checked for accuracy and consistency. The Construction and Valuation Section will prepare a written review of its findings with recommendations for correction of any deficiencies. The sponsor will be notified of any major deviations from VA requirements, and asked whether amendments will be submitted. If the sponsor responds that no action will be taken to meet VA requirements, processing will be discontinued. Loan Guaranty will confirm the withdrawal or cancellation in writing.

b. If no major inconsistencies are found, or if major items of non conformance have been pointed out to the sponsor and the sponsor agrees to correct them, the documents and the Construction and Valuation Section review will be forwarded to VA District Counsel for legal review.

c. Processing Under the Limited Review Procedure

(1) In most circumstances, upon completion of Loan Guaranty's initial review, each new condominium submission will be referred immediately to VA District Counsel for review. Referral to District Counsel is not required when a complete set of project documentation is submitted accompanied by a certification from the sponsor's attorney that the documents are identical to a previously approved and identified set of documents except for name and legal description.

(2) If there are variations (other than name and legal description) from the documents of a previously approved project, each variation should be pointed out in the sponsor's attorney's certification. Only the variations will be subject to District Counsel or Loan Guaranty approval.

(3) Legal review by District Counsel may also be limited to a determination of compliance with 38 CFR 36.4350 and 36.4357(b) if a State agency can certify that the condominium has been created in compliance with the laws of jurisdiction. Sponsors should contact the VA regional office to determine the extent of VA review.

17.09 OFFICE OF DISTRICT COUNSEL - LEGAL REVIEW

The limited review of organizational documents by the Office of the District Counsel will determine whether:

(1) The condominium has been created in compliance with the law of the jurisdiction in which the property is located; and

(2) There is anything in the documents to preclude veteran-purchasers from acquiring title as specified in 38 CFR 36.4350 and 36.4357(b).

17.10 LOAN GUARANTY DIVISION - NOTICE, APPRAISALS, AND COMPLIANCE INSPECTIONS

a. Notice to Sponsor. Upon receipt of the District Counsel's opinion, VA Loan Guaranty will notify the sponsor by Form Letter 26-619, Condominium Project Status Notice, that the project is acceptable or unacceptable. Where unacceptable, the provisions) which are the basis for the finding will be noted on the form letter or an attachment. If acceptable, Form Letter 26-619 or attachment to will also inform the sponsor of any condominium requirements that must be met prior to guaranty.

b. Draft Documents. When the initial review of organizational documents is conducted on the basis of unrecorded draft documents, VA regional offices will establish controls to ensure that the organizational documents, as approved by VA, are recorded without change.

c. Appraisal Assignments. Appraisal assignments will be made only upon acceptance of the organizational documents, and will be performed in accordance with the requirements of the local VA office. Condominium appraisals will be assigned to fee appraisers who have demonstrated to the satisfaction of the VA regional office the ability to complete assignments satisfactorily, within acceptable time limits. The Construction and Valuation Section at each regional office will determine which appraisers possess the expertise and experience required for valuation of condominiums. Until it is determined by the regional office that requesters are submitting condominium appraisal requests satisfactorily, with documentation as outlined in this handbook, condominium telephone requests may be limited.

d. Appraisal of Condominium Conversions. The fee appraiser must be able to ascertain the degree to which the converted structure has or will be rehabilitated for conversion condominium use. The structure may have been or is proposed to be remodeled, renovated, rehabilitated, modernized, or "cosmetically" refurbished. It is important that fee appraisers explain in their appraisal reports the type of work completed or to be completed. There is a vast value difference between an old structure which is being completely renovated versus a "cosmetically" refurbished structure. The statements prescribed in paragraph 17.05d must be acceptable prior to guaranty of the first unit loan in the development. The statements required by paragraph 17.05d must include an opinion from a registered professional engineer and/or architect describing the present condition of all structural and mechanical components material to the use and enjoyment of the conversion, and a statement of the expected useful life of these components: roof, elevators, heating and cooling, plumbing and electrical systems, assuming normal maintenance. A minimum of 10 years' estimated remaining useful life is required on all structural and mechanical components. The alternative described in paragraph 17.05d for contribution of funds by the declarant may be used and documented. The prescribed statements may have an impact on the budget and financial statements in relation to reserves for replacements and their impact on a value estimate. The statements and remaining useful life requirements are not applicable to existing resale conversion projects. Consequently, it is unnecessary for local VA offices to make a differentiation or to establish whether an existing resale condominium (with no declarant in control of the owners, association or marketing units) is a conversion or a project built and sold originally as a condominium. The VA fee appraisers) is to value all existing resale condominiums in conformance with VA MPRs for existing construction.

e. Compliance Inspections (High Rise and Low Rise Condominiums and All Conversion(s)

(1) Acceptance of Local Building Code Inspections. VA will accept inspection findings of local building code enforcement agencies for VA acceptance of a project if they have expertise in both low rise and high rise construction and all types of condominium conversion construction. If local authorities have adopted standards for low rise and high rise construction and condominium conversion construction, such as the Uniform Building Code, Building Officials Conference of America Basic Building Code, the Southern Building Code, National Building Code, or comparable codes, VA regional offices will assure that codes are implemented by local authorities. After construction is complete, evidence of final municipal approval and occupancy authorization must be presented to the VA regional office.

(2) Certification Procedure in Lieu of Local Authority Inspection. Where there are no local standards, or standards are inferior to, or in conflict with VA objectives, a certification is required from a registered professional architect and/or registered engineer certifying that the plans and specifications conform to one of the previously referenced codes which is typical of similar construction methods and standards for condominiums used in the area. Those portions of the condominium conversion not being altered, improved or repaired will be appraised in accordance with 38 CFR 36.4360a(a). Upon completion of construction, a certification by the same individual who certified the plans and specifications will be submitted to the VA regional office, stating that construction conforms to plans and specifications.

(3) Final Inspection - All Cases. A final VA inspection will be required to verify the completion and inclusion of visible items (including all of the project's buildings) and common elements) upon which VA based its valuation from the plans and specifications. In conversion projects, the final VA inspection will verify that the declarant's renovation program, which served as a basis for VA's valuation, has been completed in accordance with plans and specifications or other representations made in the project submission. Final inspections will be accomplished by VA staff or fee inspections documented on VA Form 26-1839.

(4) Site Engineering and Development. Site engineering and development will be performed by the local agency of jurisdiction.

17.11 FEES

VA regional offices will establish a schedule of fees for condominium appraisals, which are commensurate with fees for similar services paid by private institutions, other governmental or quasi-governmental agencies.

17.12 CONDOMINIUM SUBMISSIONS - REQUIRED FORMS AND DOCUMENTS

Submit all documents in duplicate unless otherwise indicated.

Legend: X - Required
AA - As Applicable

	NEW PROJECTS		EXISTING PROJECTS	
SECTION 1. Organizational Documents. One-time submission only for each project or individual request. Draft documents are acceptable.	PROPOSED	CONSTRUCTION	EXISTING	EXISTING
SECTION 2. Unit and Project Data. Items a through c: one-time submission only for each project or individual request; items d through h: For each request involving existing units.				
SECTION 3. Appraisal Requests.				
SECTION 4. Special Requirements. If applicable, these items must be submitted before guaranty of any loan.				
1. Organizational Documents				
a. Declaration for the project, including any addendums	x	x	x	x
b. Bylaws of the condominium association	x	x	x	x
c. Recorded project plat, map and/or air lot survey. (If not yet recorded as with proposed projects, submit final form plat, map, or air lot survey, with all proposed certifications, dedications, and other narrative material included or incorporated by reference.)	x	x	x	x
d. Management agreement.	AA	AA	AA	AA
e. Articles of incorporation of the condominium association.	AA	AA	AA	AA
f. Proposed condominium association budget.	x	x	AA	
g. Documents for nonprofit offsite corporation to include:				
(1) Declaration of Covenants	AA	AA	AA	AA
(2) Conditions and Restrictions	AA	AA	AA	AA
(3) Articles of Incorporation	AA	AA	AA	AA
(4) Bylaws	AA	AA	AA	AA
(5) Plat or survey showing the location of the section of land upon which the offsite recreational facility will be built, including design and size of offsite recreational facility.	AA	AA	AA	AA
h. Cross-easements.	AA	AA	AA	AA
i. Service contracts		AA	AA	AA AA

	NEW PROJECTS		EXISTING PROJECTS	
	PROPOSED	UNDER CONSTRUCTION	EXISTING DECLARANT	EXISTING RESALE
j. Facilities leases.	AA	AA	AA	AA
k. Developer's general plan and schedule for development.	X	X	AA	
l. State reviewing agency's report.	AA	AA	AA	
m. Form of grant deed or leasehold agreement (in those jurisdictions where leaseholds previously authorized by VA) to be used in conveying individual living units.	X	X	X	
2. Unit and Project Data				
a. Information brochure		X	X	X
b. Form of purchase contract for individual living unit.			X	X X
c.Minutes of last two Council of Co-Owners meeting	AA	X	X	
d. Current condominium budget.			X	X
e. Current financial statement of condominium project (including reserves).		AA	X	X
f. Statement signed by officer of Board of Directors of Council of Co-Owners or Declarant specifying any existing or pending special assessments and any pending litigation affecting the condominium or condominium conversion.	AA	X	X	
g. Plat, map, arid/or air lot survey to adequately identify subject unit(s).	AA	AA	X	X
3. Appraisal Request				
a. VA Form 26-1805 (One set for each plan type or individual unit).	X	X	X	X
b. Complete set of plans and specifications (for total project) bearing seal of registered professional architect and/or engineer (low rise and high rise condominium). For horizontal condominiums, submit VA Form 26-1852, Description ,of Materials, according to current requirements.		X	X	

	NEW PROJECTS		EXISTING PROJECTS	
	PROPOSED	CONSTRUCTION UNDER	EXISTING DECLARANT	EXISTING RESALE
4. Special Requirements				
a. Submit certified copies of recorded organizational documents all conforming to previously accepted drafts.	X	X	X	X
b. Lender's certification that presale requirement has been met.	X	X	AA	AA
c. Warranty against structural defects (conversions excluded).		X	X	AA
d. Evidence of completion of construction of project (including common elements) by final municipal approval and occupancy authorization and final VA compliance inspection (low rise and high rise condominiums and all conversions).	X	X	X	
e. VA compliance inspection procedures or VA acceptance of FHA compliance inspection procedure applicable to proposed construction (horizontal condominium only, conversions excluded).			X	AA
f. Evidence of flood insurance.	AA	AA	AA	AA
g. Termite certification (horizontal condominiums only).				X
h. Lender's certification that occupancy level has been attained.				AA
i. Submit statute(s) with an opinion from a registered professional engineer and/or architect describing the present condition of all structural and mechanical components material to the use and enjoyment of the conversion condominium. Such engineer or architect shall also provide a statement of the expected useful life of these applicable components: roof, elevators, heating and cooling, plumbing and electrical systems, assuming normal maintenance. (Includes all common element facilities).This is a-one-time requirement for each project phase or initial individual request (conversion only).		X	X	X
j. Submit a statement(s) by the local authority(ies) of the adequacy of utilities servicing the site (e.g., sanitary or water). If local authorities decline to issue a statement, a statement from a registered professional engineer is acceptable (conversion only).		X	X	X